

# federal register

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## PART I



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This listing does not affect the legal status of any document published in this issue. Detailed table of contents appears inside.

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# rules and regulations

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each month.

## Title 7—Agriculture.

### CHAPTER II—FOOD AND NUTRITION SERVICE, DEPARTMENT OF AGRICULTURE

[Amdt. 38]

#### PART 271—PARTICIPATION OF STATE AGENCIES AND ELIGIBLE HOUSEHOLDS

##### Food Stamp Program

Pub. L. 93-86 approved August 10, 1973, amended the Food Stamp Act to require States to submit a plan prior to January 1, 1974 to implement the Food Stamp Program in every political subdivision in the State no later than June 30, 1974, except where they can demonstrate that such implementation is impossible or impracticable. Regulations implementing this requirement were effective August 21, 1973.

Recently enacted provisions of Pub. L. 93-347, approved July 12, 1974, further amended the Food Stamp Act to permit Indian reservations not requesting the Food Stamp Program to continue participating in the Food Distribution Program through June 30, 1977.

In accordance with the intent of Congress to extend the program option to reservations which have agreed to participate in the Food Stamp Program pursuant to the directive of Pub. L. 93-86, the Food Stamp Regulations are amended so that those reservations which (1) began Food Stamp Program participation after August 21, 1973, and (2) are located in States that agree to carry out the Food Distribution Program pursuant to regulations of this Department governing that program, may elect to reinstitute participation in the family Food Distribution Program.

Operating expense funds will be provided by the Department to assist the States in the operation of the Food Distribution Program on the condition that the caseload is sufficient to justify accepting food in carload lots or split shipments as a minimum.

Each reservation to which the choice of programs is available must, through the appropriate State agency, inform the U.S. Department of Agriculture of its decision. If a reservation reinstitutes the Food Distribution Program, it will be required to revert to the Food Stamp Program by June 30, 1977.

It is the policy of this Department to give 30 days notice for comments on amendments to the regulations. However, because Public Law 93-347 mandates that Indian reservations be given the option of reinstituting the family Food Distribution Program if they so desire, this amendment will be published in the Fed-

ERAL REGISTER in final form. Any delay in publication of this amendment would be contrary to the public interest.

Therefore, paragraph (1) of § 271.1, Part 271 of Chapter II of Title 7 of the Code of Federal Regulations is amended to read as follows:

§ 271.1 General terms and conditions for State agencies.

(1) *Plan of Operation requirement.* (1) Each State agency shall submit for approval of FNS a Plan of Operation, prepared in accordance with the provisions of § 271.8. Such plan shall cover a Federal fiscal year and may be extended for succeeding Federal fiscal years at the option of FNS unless sooner terminated or suspended as provided in paragraph (s) of this section. Each State agency shall, prior to January 1, 1974, submit for approval of FNS a plan specifying the manner in which it intends to conduct the Food Stamp Program in every political subdivision in the State, unless such State agency can demonstrate that for any political subdivision it is impossible or impracticable to extend the program to such subdivision. FNS shall make a determination of approval or disapproval of such plan in sufficient time to permit institution of such plan by no later than June 30, 1974.

(2) Notwithstanding any other provision of this paragraph (1); Indian reservations on which Food Stamp Program operations were instituted on or after August 21, 1973 (referred to in this subparagraph as "eligible reservations") may elect to request reinstitution of the Food Distribution Program on such reservations. The Department will approve such request: *Provided*, That the Food Distribution Program is carried out pursuant to the regulations of this Department governing that program, Part 250 of this chapter. Each eligible reservation which elects reinstitution of the Food Distribution Program shall, through the appropriate State agency, inform the Department of its election. Eligible reservations which, pursuant to this subparagraph, elect reinstitution of the Food Distribution Program shall, by no later than June 30, 1977, complete conversion back to the Food Stamp Program. Any Indian reservation which, with the approval of the Department, participates in the Food Distribution Program may, after reasonable notice to the applicable State agency and this Department, discontinue participation in that program and begin participation in the Food Stamp Program.

(78 Stat. 703, as amended; 7 U.S.C. 2011-2026)

*Effective date.* This amendment shall become effective October 18, 1974.

(Catalog of Federal Domestic Assistance Programs No. 10.551, National Archives Reference Services)

RICHARD L. FELTNER,  
Assistant Secretary.

OCTOBER 11, 1974.

[FR Doc. 74-24335 Filed 10-17-74; 8:45 am]

### CHAPTER VII—AGRICULTURAL STABILIZATION AND CONSERVATION SERVICE (AGRICULTURAL ADJUSTMENT), DEPARTMENT OF AGRICULTURE

#### SUBCHAPTER B—FARM MARKETING QUOTAS AND ACREAGE ALLOTMENTS

##### PART 722—COTTON

#### 1975 Crop of Extra Long Staple Cotton; Acreage Allotments and Marketing Quotas

The provisions of §§ 722.558 to 722.561 are issued pursuant to the Agricultural Adjustment Act of 1938, as amended (7 U.S.C. 1281 et seq.) (referred to as the "act") with respect to the 1975 crop of extra long staple cotton (referred to as "ELS cotton"). The purpose of these provisions is to (1) proclaim a national marketing quota and national acreage allotment for the 1975 crop of ELS cotton; (2) apportion the national acreage allotment to States; and (3) fix the period for holding the national marketing quota referendum. The latest available statistics of the Federal Government have been used in making determinations under these provisions.

Notice that the Secretary was preparing to make determinations with respect to these provisions was published in the FEDERAL REGISTER on July 17, 1974 (39 FR 26160), in accordance with 5 U.S.C. 553. The views and recommendations received in response to such notice have been duly considered.

It is essential that these provisions be made effective as soon as possible since the proclamation of the quota and the national allotment is required to be made not later than October 15, 1974. Accordingly, it is hereby found and determined that compliance with the 30-day effective date requirement of 5 U.S.C. 553 is impracticable and contrary to the public interest, and §§ 722.558 to 722.561 shall be effective upon filing this document with the Director, Office of the Federal Register. The material previously appearing in these sections under centerhead "1974 Crop of Extra Long Staple Cotton; Acreage Allotments and Marketing Quotas" remains in full force and effect as to the crop to which it was applicable.

Sections 722.558 through 722.561 are amended as follows:

**§ 722.558 National marketing quota for the 1975 crop of ELS cotton.**

The marketing quota for the 1975 crop of ELS cotton is hereby proclaimed to be an amount of 82,481 standard bales determined in accordance with section 347(b) of the act. The marketing quota for the 1975 crop is the minimum quota prescribed under section 347(b) (2) of the act. The quota is based on the following data:

(1) Estimated domestic consumption, 1975-76.....	75,000
(2) Estimated exports, 1975-76.....	+5,000
(3) Adjustment to assure adequate stocks and to provide the minimum quota.....	+27,481
(4) Estimated imports, 1975-76.....	-25,000
<b>Total .....</b>	<b>82,481</b>

**§ 722.559 National acreage allotment for the 1975 crop of ELS cotton.**

It is hereby determined and proclaimed that a national acreage allotment shall be in effect for the crop of ELS cotton produced in the calendar year 1975. The amount of such national allotment is 91,223 acres calculated by multiplying the national quota in bales by 480 pounds (net weight of a standard bale) and dividing the result by the national average yield of 434 pounds per planted acre of ELS cotton for the four calendar years 1970, 1971, 1972 and 1973.

**§ 722.560 Apportionment of national acreage allotment to the States.**

The national acreage allotment of 91,223 acres is apportioned to the States in accordance with section 344(b) of the act as follows:

State:	State allotment (acres)
Arizona .....	39,579
California .....	582
Florida .....	126
Georgia .....	122
New Mexico .....	18,539
Texas .....	32,275

**§ 722.561 National marketing quota referendum for the 1975 crop of ELS cotton.**

The national marketing quota referendum for the 1975 crop of ELS cotton shall be held during the referendum period December 9 to 13, 1974, each inclusive, by mail ballot in accordance with Part 717 of this chapter (33 FR 18345, 34 FR 12940, 36 FR 12730, 38 FR 12891). (Secs. 301, 343, 344, 347, 375, 52 Stat. 38, as amended; 63 Stat. 670, as amended; 63 Stat. 675, as amended; 52 Stat. 66, as amended (7 U.S.C. 1301, 1343, 1344, 1347, 1375)).

Effective date: October 15, 1974.

Signed at Washington, D.C., on October 15, 1974.

EARL L. BUTZ,  
Secretary.

[FR Doc.74-24289 Filed 10-15-74; 11:15 am]

**CHAPTER VIII—AGRICULTURAL STABILIZATION AND CONSERVATION SERVICE (SUGAR), DEPARTMENT OF AGRICULTURE**

**SUBCHAPTER I—DETERMINATION OF PRICES**

[Docket No. SH-325]

**PART 874—SUGARCANE; LOUISIANA**

**Fair and Reasonable Prices for 1974-Crop**

The Sugar Act requires producers who also process sugarcane grown by other producers to pay prices determined by the Secretary of Agriculture to be fair and reasonable as one of the conditions for receiving Sugar Act payments on their own production.

Such determination may not be made until after investigation and opportunity for interested persons to testify on the fair and reasonable prices to be paid under either purchase or toll agreements. A public hearing was held in Houma, Louisiana, on May 20, 1974.

The determination, which is applicable to the 1974 crop of Louisiana sugarcane, increases the basic price for standard sugarcane from \$1.05 to \$1.06 per ton and continues most of the other basic provisions of the 1973 crop determination. Other changes include minor revisions in the beginning and ending dates of the pricing periods of raw sugar and blackstrap molasses used by processors in making settlement with producers for sugarcane; and an increase in the maximum fee which processors may charge producers for processing sugarcane which has been damaged by general freeze.

Pursuant to the provisions of section 301(c) (2) of the Sugar Act of 1948 (7 U.S.C. 1131(c) (2)), as amended (herein referred to as "act"), after investigation and due consideration of the evidence presented at the public hearing held in Houma, Louisiana, on May 20, 1974, the following determination is hereby issued.

The regulations previously appearing in these sections under "Determination of Prices; Sugarcane; Louisiana" remain in full force and effect as to the crops to which they were applicable.

Part 874 is revised to read as follows:

Sec.	
874.33	General requirements.
874.34	Definitions.
874.35	Basic price.
874.36	Conversion of net sugarcane to standard sugarcane.
874.37	Payment for frozen sugarcane.
874.38	Molasses payment.
874.39	Holsting, weighing and transportation.
874.40	Mutual plan for improving harvesting and delivery.
874.41	Toll agreements.
874.42	Applicability.
874.43	Subterfuge.
874.44	Processor mill procedures and checking compliance.
874.45	Reporting requirements.

AUTHORITY: Secs. 301, 403, 61 Stat. 929, as amended, 932; (7 U.S.C. 1131, 1153).

**§ 874.33 General requirements.**

A producer of sugarcane in Louisiana who is also a processor of sugarcane, to

which this part applies as provided in § 874.42 (herein referred to as "processor"), shall have paid or contracted to pay for sugarcane of the 1974 crop grown by other producers and processed by him or shall have processed sugarcane of other processors under a toll agreement, in accordance with the following requirements.

**§ 874.34 Definitions.**

For the purpose of this part, the term:

(a) "Price of raw sugar" means the price of 96° raw sugar quoted by the Louisiana Sugar Exchange, Inc., except that if the Director of the Sugar Division, Agricultural Stabilization and Conservation Service, U.S. Department of Agriculture, Washington, D.C. 20250, determines that such price does not reflect the true market value of raw sugar, because of inadequate volume, failure to report sales in accordance with the rules of such Exchange or other factors, he may designate the price to be effective under this determination, which he determines will reflect the true market value of raw sugar.

(b) "Price of blackstrap molasses" means the price per gallon of blackstrap molasses quoted by the Louisiana Sugar Exchange, Inc., except that if the Director of the Sugar Division determines that such price does not reflect the true market value of blackstrap molasses, because of inadequate volume, failure to report sales in accordance with the rules of such exchange or other factors, he may designate the price to be effective under this determination, which he determines will reflect the true market value of blackstrap molasses.

(c) "Weekly average price" means the simple average of the daily prices of raw sugar or blackstrap molasses, for the week (Friday through the following Thursday) in which the sugarcane is delivered.

(d) "Season's average price" means the simple average of the weekly prices of raw sugar or of blackstrap molasses for the period October 4, 1974 through April 10, 1975.

(e) "Delivered average price" means the weighted average price of 1974-crop raw sugar determined by weighting (1) the simple average of the daily prices of raw sugar for the period October 4, 1974 through December 31, 1974 by the quantity of 1974-crop sugar, raw value, marketed by the processor in 1974; and (2) the simple average of the daily prices of raw sugar for the period January 1, 1975 through February 20, 1975 by the quantity of 1974-crop sugar, raw value, not marketed in 1974.

(f) "Net sugarcane" means the quantity of sugarcane obtained by deducting the weight of trash from the gross weight of sugarcane as delivered by a producer.

(g) "Trash" means green or dried leaves, sugarcane tops, dirt, and all other extraneous material delivered with sugarcane.

(h) "Standard sugarcane" means net sugarcane, containing 12 percent sucrose

in the normal juice with a purity of at least 76.00 but not more than 76.49 percent.

(i) "Salvage sugarcane" means any sugarcane containing either less than 9.5 percent sucrose in the normal juice or less than 68 purity in the normal juice.

(j) "Percent sucrose in normal juice" means average percent sucrose in sample mill juice obtained from producers' sugarcane multiplied by a factor representing the ratio of factory normal juice sucrose to the average percent sucrose in sample mill juice extracted from producers' sugarcane.

(k) "Average percent sucrose in sample mill juice" means the percentage of sucrose solids in juice extracted from samples of producers' sugarcane by the sample mill.

(l) "Factory crusher juice Brix" means the percentage of soluble solids in undiluted mill crusher juice as determined by direct analysis in accordance with standard procedures.

(m) "Factory normal juice sucrose" means the percentage of sucrose in undiluted juice extracted by a mill tandem, or by a mill tandem and a diffuser, as determined by multiplying factory dilute juice purity by factory normal juice Brix.

(n) "Factory normal juice Brix" means the percentage of soluble solids in the undiluted juice extracted from sugarcane by a mill tandem, or by a mill tandem and a diffuser, as determined by multiplying factory crusher juice Brix by a dry milling factor representing the ratio of factory normal juice Brix to factory crusher juice Brix.

(o) "Factory dilute juice purity" means the ratio of factory dilute juice sucrose to factory dilute juice Brix which are determined by direct analysis.

(p) "Percent purity of normal juice" means the ratio which the percentage of sucrose solids bears to the percentage of Brix solids in the normal juice of each producer's sugarcane.

(q) "State office" means the Louisiana State Agricultural Stabilization and Conservation Service Office, 3737 Government Street, Alexandria, LA 71303.

(r) "State committee" means the Louisiana State Agricultural Stabilization and Conservation Committee.

#### § 874.35 Basic price.

(a) The basic price for standard sugarcane shall be not less than \$1.06 per ton for each 1-cent per pound of raw sugar determined on the basis of the weekly average price, the season's average price, or the delivered average price as elected by the processor in writing to the State office not later than Oct. 29, 1974, and the pricing basis elected shall be used for pricing all 1974-crop sugarcane. The average price of raw sugar as determined above shall be increased 0.02 cent for all mills located in Freight Area (A); may be decreased 0.02 cent by processors in Freight Area (B); and may be decreased 0.05 cent by processors in Freight Area (C).<sup>1</sup>

(b) The basic price for salvage sugarcane shall be determined in accordance with the method of settlement used by the processor for the 1973 crop, except that the processor and producer may agree upon a different method of settlement subject to written approval by the State office upon a determination by the State committee that the method of settlement and the resultant price are fair and reasonable.

(c) Notwithstanding paragraphs (a) and (b) of this section, a cooperative processor and its nonmember producers may agree upon a reasonable deduction for a reasonable number of years from

<sup>1</sup> The quality factor for sugarcane of intermediate percentages of sucrose in normal juice shall be interpolated and for sugarcane having more than 14.5 percent sucrose in the normal juice shall be computed in proportion to the immediately preceding interval.

the basic price paid to nonmembers for standard sugarcane in cases where the parties have entered into uniform marketing agreements whereby the co-operatives guarantees the acceptance and processing of specified quantities of nonmembers' sugarcane for a period of not less than 10 years, any such agreement to be approved in writing by the State office upon a determination by the State committee that the agreement is fair and reasonable.

#### § 874.36 Conversion of net sugarcane to standard sugarcane.

Net sugarcane (except salvage sugarcane) shall be converted to standard sugarcane as follows:

(a) By multiplying the quantity of net sugarcane delivered by each producer by the applicable quality factor in accordance with the following table:

Standard sugarcane quality factor <sup>1</sup>	
Percent sucrose in normal juice:	
9.5	0.60
10.0	.70
10.5	.80
11.0	.90
11.5	.95
12.0	1.00
12.5	1.05
13.0	1.10
13.5	1.15
14.0	1.20
14.5	1.25

<sup>1</sup> Freight Area (A) includes all mills except those located in Areas (B) and (C) below: Freight Area (B) includes all mills located north of Bayou Goula between the Atchafalaya and Mississippi Rivers and southeast of New Iberia and west of the Atchafalaya River. Freight Area (C) includes all mills located north and west of New Iberia west of the Atchafalaya River.

and,

(b) By multiplying the quantity determined pursuant to paragraph (a) of this section by the applicable purity factor in the following table:

## RULES AND REGULATIONS

STANDARD SUGARCANE PURITY FACTOR<sup>1</sup>

Percent purity of normal juice			Percent Sucrose in Normal Juice															
			At least 9.50,	9.70	9.90	10.10	10.30	10.50	11.00	11.50	12.00	12.50	13.00	13.50	14.00	14.50	15.00	15.50
At least	But not more than	But not more than 9.69	9.89	10.09	10.29	10.49	10.99	11.49	11.99	12.49	12.99	13.49	13.99	14.49	14.99	15.49	15.99	
63.00	63.24	1.000	0.989	0.978	0.967	0.956	0.945	0.936	0.929	0.922	0.915	0.908	0.901	0.894	0.887	0.880	0.873	
63.25	63.49	1.005	.993	.982	.971	.960	.949	.941	.934	.927	.920	.913	.906	.899	.892	.885	.878	
63.50	63.74	1.010	.998	.987	.976	.965	.954	.945	.938	.931	.924	.917	.910	.904	.897	.890	.884	
63.75	63.99	1.016	1.003	.992	.981	.970	.959	.950	.943	.936	.929	.922	.915	.908	.902	.895	.888	
63.99	63.49	1.021	1.009	.997	.986	.975	.964	.955	.948	.941	.934	.927	.920	.914	.907	.900	.893	
63.50	63.99	1.025	1.013	1.001	.990	.979	.968	.960	.953	.945	.938	.931	.924	.918	.912	.905	.898	
70.00	70.49	1.030	1.018	1.006	.995	.984	.973	.965	.958	.950	.943	.936	.929	.923	.917	.911	.903	
70.50	70.99	1.035	1.023	1.011	.999	.988	.977	.969	.962	.954	.947	.940	.933	.927	.921	.915	.908	
71.00	71.49	1.040	1.028	1.016	1.004	.993	.982	.974	.966	.959	.951	.945	.938	.932	.925	.919	.912	
71.50	71.99	1.045	1.033	1.021	1.009	.998	.987	.978	.970	.963	.955	.949	.942	.936	.930	.924	.918	
72.00	72.49	1.050	1.038	1.026	1.014	1.003	.992	.983	.975	.967	.960	.954	.947	.940	.934	.928	.922	
72.50	72.99	1.055	1.043	1.031	1.019	1.007	.996	.987	.979	.971	.964	.958	.951	.944	.938	.932	.926	
73.00	73.49	1.060	1.048	1.036	1.024	1.012	1.000	.991	.984	.976	.968	.962	.955	.948	.942	.936	.930	
73.50	73.99	1.065	1.052	1.040	1.028	1.016	1.004	.995	.988	.980	.972	.966	.959	.952	.946	.940	.934	
74.00	74.49		1.057	1.044	1.032	1.020	1.008	1.000	.992	.984	.977	.970	.963	.956	.950	.944	.938	
74.50	74.99		1.062	1.049	1.036	1.024	1.012	1.004	.996	.988	.981	.974	.967	.960	.954	.948	.942	
75.00	75.49			1.054	1.041	1.028	1.016	1.008	.999	.992	.985	.978	.971	.964	.958	.952	.946	
75.50	75.99			1.059	1.046	1.033	1.020	1.011	1.004	.996	.988	.981	.974	.967	.961	.955	.949	
76.00	76.49				1.051	1.038	1.025	1.015	1.008	.999	.992	.985	.978	.971	.965	.959	.953	
76.50	76.99					1.054	1.028	1.019	1.011	1.004	.996	.988	.981	.974	.967	.961	.955	
77.00	77.49						1.045	1.032	1.023	1.015	1.008	.999	.992	.985	.978	.971	.965	
77.50	77.99						1.049	1.035	1.027	1.019	1.011	1.003	.996	.989	.983	.977	.971	
78.00	78.49							1.039	1.031	1.023	1.015	1.007	1.000	.993	.987	.981	.975	
78.50	78.99							1.042	1.035	1.026	1.018	1.010	1.003	.996	.990	.984	.978	
79.00	79.49							1.039	1.030	1.022	1.014	1.007	1.000	.993	.987	.981	.975	
79.50	79.99							1.043	1.033	1.025	1.017	1.010	1.003	.996	.990	.984	.978	
80.00	80.49								1.037	1.029	1.021	1.014	1.007	1.000	.994	.988	.982	
80.50	80.99								1.032	1.024	1.017	1.010	1.003	.997	.991	.985	.979	
81.00	81.49									1.036	1.028	1.021	1.014	1.008	1.000	.994	.988	
81.50	81.99									1.039	1.032	1.024	1.017	1.010	1.003	.997	.991	
82.00	82.49										1.035	1.027	1.020	1.013	1.007	1.000	.993	
82.50	82.99										1.033	1.030	1.023	1.016	1.010	1.004	.998	
83.00	83.49											1.033	1.027	1.019	1.013	1.007	1.000	
83.50	83.99											1.036	1.030	1.022	1.016	1.010	1.004	
84.00	84.49												1.033	1.025	1.019	1.013	1.007	
84.50	84.99													1.023	1.022	1.016	1.010	

**§ 874.40 Mutual plan for improving harvesting and delivery.**

If a processor and the producers delivering sugarcane to such processor mutually agree upon a plan for improving harvesting and delivery operations, the processor may deduct from the price per ton of sugarcane an amount equal to one-half of the per ton cost of such plan. Such deduction may not be made until the plan has the written approval of the State office and it has been determined by the State committee that the plan is fair and reasonable.

**§ 874.41 Toll agreements.**

The rate for processing sugarcane produced by a processor and processed under a toll agreement by another processor shall be the rate they agree upon.

**§ 874.42 Applicability.**

The requirements of this part are applicable to all sugarcane purchased from other producers and processed by a processor who produces sugarcane (a processor-producer is defined in 7 CFR 821.1); and to sugarcane purchased by a cooperative processor from non-members. The requirements are not applicable to sugarcane processed by a cooperative processor for its members.

**§ 874.43 Subterfuge.**

The processor shall not reduce the returns to the producer below those determined in accordance with the requirements of this part through any subterfuge or device whatsoever.

**§ 874.44 Processor mill procedures and checking compliance.**

The procedures to be followed by processors in determining net sugarcane, trash, average percent sucrose in normal juice, average percent crusher juice sucrose, factory normal juice sucrose, factory crusher juice sucrose, percent purity of normal juice; and other related mill procedures and required reports are set forth in ASCS Handbook 8-SU entitled "Sampling, Testing, and Reporting for Louisiana Sugar Processors", copies of which have been furnished each processor. The procedures to be followed by the State office in checking compliance with the requirements of this part are set forth under the heading "Fair Price Compliance" in Handbook 3-SU, issued by the Deputy Administrator, Programs, Agricultural Stabilization and Conservation Service. Handbooks 8-SU and 3-SU may be inspected at county ASCS offices and copies may be obtained from the Louisiana State ASCS Office, 3737 Government Street, Alexandria, LA 71303.

**§ 874.45 Reporting requirements.**

The processor shall submit to the State office no later than May 1, 1975, a statement showing the calculation of the average price of raw sugar and blackstrap molasses for the period(s) on which settlement is based. The processor shall maintain on file for a period of 5 years records of the original data compiled for the reports required by Handbook 8-SU.

**STATEMENT OF BASES AND CONSIDERATIONS**

*General.* The foregoing determination establishes the fair and reasonable price requirements which must be met, as one of the conditions for payment under the act, by a producer who processes sugarcane of the 1974 crop grown by other producers.

*Requirements of the act.* Section 301 (c) (2) of the act provides as a condition for payment, that the producer on the farm who is also, directly or indirectly a processor of sugarcane, as may be determined by the Secretary, shall have paid or contracted to pay under either purchase or toll agreements, for sugarcane grown by other producers and processed by him at rates not less than those that may be determined by the Secretary to be fair and reasonable after investigation and due notice and opportunity for public hearing.

*1974-crop price determination.* This determination differs from the 1973 crop determination in the following respects: (1) The basic price of standard sugarcane is increased to \$1.06 per ton for each one cent per pound; (2) the period for determining the season's average prices of raw sugar and blackstrap molasses is from October 4, 1974 through April 10, 1975; (3) the periods for determining the delivered average price of raw sugar are from October 4, 1974 through December 31, 1974 for 1974-crop sugar; raw value, marketed in 1974 and from January 1, 1975 through February 20, 1975 for 1974-crop sugar, raw value, not marketed in 1974; and (4) the maximum charge for processing sugarcane which has been damaged by a general freeze is increased from \$3.90 per gross ton of sugarcane to \$6.40 per gross ton.

At the public hearing in Houma, Louisiana, on May 29, 1974, interested persons were afforded the opportunity to present their views on fair and reasonable prices for 1974-crop Louisiana sugarcane. Representatives of the Louisiana Grower-Processor Committee and the Louisiana Farm Bureau Federation recommended that the same three bases of settlement for sugarcane provided in the 1973 determination be continued for the 1974 crop; that the period for determining the season's average prices of raw sugar and blackstrap molasses extend from October 4, 1974, through April 10, 1975; and that the period for determining the delivered average price of raw sugar extend from October 4, 1974, through December 31, 1974, for 1974 crop sugar marketed under the processor's 1974 marketing allotment, and from January 1, 1975 through February 20, 1975 for 1974-crop sugar not marketed under the processor's 1974 marketing allotment. The witnesses further recommended that the maximum rate allowed for processing frozen sugarcane be increased from \$3.90 to an amount not to exceed \$6.40 per gross ton; that raw sugar freight differentials be adjusted to recognize any increase in rail freight rates; that samples of sugarcane for trash be taken directly from the conveyance rather than after the sugarcane has been unloaded;

and that processors be required to notify the Louisiana State Office by October 29, 1974, of the pricing basis elected for pricing all sugarcane purchased. They also recommended that the Department, in its review of the pricing factor, analyze all increases or decreases in returns and costs to be certain the proper sharing relationship between producers and processors is being maintained.

In response to the Department's proposal to issue a revised table of standard sugarcane purity factors, the processors' segment of the Committee recommended that no change be made in the factors. However, it was recommended that if any change is made by the Department through adoption of a new table, adjustments should be made in the sharing relationship between the growers and processors. On the other hand, the growers recommended that any change in the purity factors be adopted without any adjustment in the sharing relationship.

Consideration has been given to the recommendations presented at the public hearing; to data on the returns, costs and profits of producing and processing sugarcane in Louisiana obtained by recent field survey and recast in terms of price and production conditions likely to prevail for the 1974 crop; and to other relevant factors. Analysis of these data indicates that the sharing relationship has become more favorable to processors and that a one-cent increase in the pricing factor is necessary to increase the growers' share of total returns to a level approximately the same as their share of the total costs of producing and processing sugarcane.

The time periods recommended by the Louisiana Grower-Processor Committee and Farm Bureau Federation for determining the average prices of raw sugar and blackstrap molasses, on which payments to producers for 1974-crop sugarcane are to be based, have been adopted. It is believed that the alternative pricing bases for sugarcane settlements with producers are equitable and will enable processors to relate such settlements to their marketing opportunities.

The Department has adopted the recommendation to increase the maximum processing rate for sugarcane which has been damaged by freeze from \$3.90 per gross ton of sugarcane to \$6.40 per gross ton. There has been a steady increase in the cost of most goods and services. A review of recent Department cost studies showed the recommended rate of \$6.40 per gross ton to be justified in view of current factory costs. The Department believes that this increase is necessary to reimburse processors for the cost of processing frozen low quality sugarcane while assuring producers a market for such cane.

Careful consideration has been given to statements made in support of the recommendation for allowing the sampling of sugarcane from the top portion of deliveries carried in conveyance. This practice would permit more frequent

sampling of producers' deliveries and result in better coordination between personnel involved in the sampling operation. Accordingly, the recommendation has been adopted and the requirement that bulk sugarcane deliveries be sampled after unloading will be deleted from Handbook 8-SU for the 1974 crop.

Testimony presented with regard to the proposed expanded standard sugarcane purity factor table has been carefully considered. It is believed that the proposed purity factors cannot be applied on a sound basis for converting net sugarcane to standard sugarcane until it has been determined that the standard sugarcane quality factors (sucrose factors) are still in line with the quality of sugarcane delivered to Louisiana factories. Varieties which have been introduced in recent years on a commercial basis may necessitate revising the table of standard sugarcane quality factors. Thus, consideration would have to be given to a change in the basic price for standard sugarcane, greater than what has been provided for in this regulation. In view of this, the use of the proposed sugarcane purity factor table has not been adopted.

Information available to the Department indicates that freight rates on raw sugar are likely to be increased in the near future. Pending a final ruling by the Interstate Commerce Commission and a ruling by the Louisiana Public Service Commission on the level of rates, no recognition can be given in this determination to any increase in rail freight rates which might subsequently occur. However, should the freight rates be increased, the Department will consider amending this regulation if it is deemed necessary, to reflect the increased freight rates.

Processors are required to elect no later than October 29, 1974 a pricing basis for raw sugar and for blackstrap molasses, which must be used in making 1974-crop payments. The processors must inform the State office in writing of the bases elected.

On the basis of an examination of all pertinent factors, the provisions of this determination are deemed to be fair and reasonable. Accordingly, I hereby find and conclude that the foregoing determination will effectuate the price provisions of the Sugar Act of 1948, as amended.

**Effective date.** This determination shall become effective October 18, 1974, and is applicable to the 1974 crop of Louisiana sugarcane.

Signed at Washington, D.C. on October 10, 1974.

KENNETH E. FRICK,  
Administrator, Agricultural Sta-  
bilization and Conservation  
Service.

[FR Doc. 74-24138 Filed 10-17-74; 8:45 am]

#### CHAPTER IX—AGRICULTURAL MARKET- ING SERVICE (MARKETING AGREE- MENTS AND ORDERS; FRUITS, VEGE- TABLES, NUTS), DEPARTMENT OF AGRICULTURE

[Orange Reg. 73, Amdt. 1; Grapefruit Reg. 75, Amdt. 1; Tangerine Reg. 46, Amdt. 1; Tangelo Reg. 46, Amdt. 1; Export Reg. 24, Amdt. 1]

#### PART 905—ORANGES, GRAPEFRUIT, TANGERINES, AND TANGELOS GROWN IN FLORIDA

##### Grade and Size Requirements

These amendments extend the current grade and size requirements specified in Orange Regulation 73, Grapefruit Regulation 75, Tangerine Regulation 46, Tangelo Regulation 46, and Export Regulation 24 from October 21, 1974, through September 28, 1975. The extension of the effective period of such regulations is necessary to promote orderly marketing and provide consumers with an ample supply of acceptable-quality fruit.

Notice was published in the FEDERAL REGISTER on September 23, 1974 (39 FR 34056), that consideration was being given to amendment of the regulations applicable to shipments of Florida oranges, grapefruit, tangerines, and tangelos handled between the production area and any point outside thereof. The notice provided that all written data, views, or arguments in connection with the proposed amendments be submitted by October 11, 1974. None were received. The regulations were recommended by the Growers Administrative Committee, established under the marketing agreement, as amended, and Order No. 905, as amended (7 CFR Part 905), regulating handling of oranges, grapefruit, tangerines, and tangelos grown in Florida. This program is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674).

The amendments reflect the Department's appraisal of the need for regulation of shipments of the specified varieties of oranges, grapefruit, tangerines, and tangelos during the period October 21, 1974, through September 28, 1975, based on the available supply and current and prospective market conditions. The amendments are necessary to ensure the continued shipment of fruit of appropriate grades and sizes in the interest of both growers and consumers. The action is necessary to maintain orderly marketing conditions by preventing the adverse effect on the market caused by shipment of lower-quality and smaller-size fruit when more than ample supplies of the more desirable grades and sizes are available to serve consumers' needs. The amendments are consistent with the objectives of the act of promoting orderly marketing and protecting the interest of consumers.

After consideration of all relevant matters presented, including the proposals set forth in the aforesaid notice

and other available information, it is hereby found that the amended regulations, as hereinafter set forth, are in accordance with said amended marketing agreement and order and will tend to effectuate the declared policy of the act.

It is hereby further found that good cause exists for not postponing the effective date of these amendments until 30 days after publication in the FEDERAL REGISTER (5 U.S.C. 553) in that (1) notice of proposed rulemaking concerning these amendments, with an effective date of October 21, 1974, was published in the FEDERAL REGISTER on September 23, 1974 (39 FR 34056), and no objection to these amendments or such effective date was received; (2) the recommendation and supporting information for regulation of the aforesaid fruits during the period specified herein were submitted to the Department after an open meeting of the Growers Administrative Committee on September 5, 1974, which was held to consider recommendations for regulation, after giving due notice of such meeting, and interested persons were afforded an opportunity to submit their views at this meeting; and (3) compliance with the amendments will not require any special preparation on the part of the persons subject thereto which cannot be completed by the effective time hereof.

Order. 1. In § 905.555 (Orange Regulation 73; 39 FR 32976) the provisions of paragraph (b) preceding subparagraph (1) thereof are amended to read as follows:

##### § 905.555 Orange Regulation 73.

(a) \* \* \*

(b) During the period October 21, 1974, through September 28, 1975, no handler shall ship between the production area and any point outside thereof in the continental United States, Canada, or Mexico:

2. In § 905.556 (Grapefruit Regulation 75; 39 FR 32976) the provisions of paragraph (b) preceding subparagraph (1) thereof are amended to read as follows: § 905.556 Grapefruit Regulation 75.

(a) \* \* \*

(b) During the period October 21, 1974, through September 28, 1975, no handler shall ship between the production area and any point outside thereof in the continental United States, Canada, or Mexico:

3. In § 905.557 (Tangerine Regulation 46; 39 FR 32976) the provisions of paragraph (b) preceding subparagraph (1) thereof are amended to read as follows: § 905.557 Tangerine Regulation 46.

(a) \* \* \*

(b) During the period October 21, 1974, through September 28, 1975, no handler shall ship between the production area and any point outside thereof

in the continental United States, Canada, or Mexico:

4. In § 905.558 (Tangelo Regulation 46; 39 FR 32976) the provisions of paragraph (b) preceding subparagraph (1) thereof are amended to read as follows:

§ 905.558 Tangelo Regulation 46.

(a) \* \* \*

(b) During the period October 21, 1974, through September 28, 1975, no handler shall ship between the production area and any point outside thereof in the continental United States, Canada, or Mexico:

5. In § 905.559 (Export Regulation 24; 39 FR 32976) the provisions of paragraph (b) preceding subparagraph (1) thereof are amended to read as follows:

§ 905.559 Export Regulation 24.

(a) \* \* \*

(b) During the period October 21, 1974, through September 28, 1975, no handler shall ship to any destination outside the continental United States other than to Canada or Mexico:

(Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674)

Dated, October 15, 1974, to become effective October 21, 1974.

FLOYD F. HEDLUND,  
Director, Fruit and Vegetable  
Division, Agricultural Mar-  
keting Service.

[FR Doc.74-24419 Filed 10-17-74;8:45 am]

[Lemon Reg. 662]

#### PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

##### Limitation of Handling

This regulation fixes the quantity of California-Arizona Lemons that may be shipped to fresh market during the weekly regulation period October 20-26, 1974. It is issued pursuant to the Agricultural Marketing Agreement Act of 1937, as amended, and Marketing Order No. 910. The quantity of lemons so fixed was arrived at after consideration of the total available supply of lemons, the quantity of lemons currently available for market, the fresh market demand for lemons, lemon prices, and the relationship of season average returns to the parity price for lemons.

§ 910.962 Lemon Regulation 662.

(a) Findings. (1) Pursuant to the marketing agreement, as amended, and Order No. 910, as amended (7 CFR Part 910), regulating the handling of lemons grown in California and Arizona, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and upon the basis of the recommendations and information submitted by the Lemon Ad-

ministrative Committee, established under the said amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of handling of such lemons, as hereinafter provided, will tend to effectuate the declared policy of the act.

(2) The need for this section to limit the quantity of lemons that may be marketed during the ensuing week stems from the production and marketing situation confronting the lemon industry.

(i) The committee has submitted its recommendation with respect to the quantity of lemons it deems advisable to be handled during the ensuing week. Such recommendation resulted from consideration of the factors enumerated in the order. The committee further reports the demand for lemons is fairly active, due in part to less fruit for sale from other production areas. Average f.o.b. price was \$6.90 per carton the week ended October 12, 1974, compared to \$6.55 per carton the previous week. Track and rolling supplies at 129 cars were up 31 cars from last week.

(ii) Having considered the recommendation and information submitted by the committee, and other available information, the Secretary finds that the quantity of lemons which may be handled should be fixed as hereinafter set forth.

(3) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking procedure, and postpone the effective date of this section until 30 days after publication hereof in the FEDERAL REGISTER (5 U.S.C. 553) because the time intervening between the date when information upon which this section is based became available and the time when this section must become effective in order to effectuate the declared policy of the act is insufficient, and a reasonable time is permitted, under the circumstances, for preparation for such effective time; and good cause exists for making the provisions hereof effective as hereinafter set forth. The committee held an open meeting during the current week, after giving due notice thereof, to consider supply and market conditions for lemons and the need for regulation; interested persons were afforded an opportunity to submit information and views at this meeting; the recommendation and supporting information for regulation during the period specified herein were promptly submitted to the Department after such meeting was held; the provisions of this section, including its effective time, are identical with the aforesaid recommendation of the committee, and information concerning such provisions and effective time has been disseminated among handlers of such lemons; it is necessary, in order to effectuate the declared policy of the act, to make this section effective during the period herein specified; and compliance with this section will not require any special preparation on the part of persons subject hereto which cannot be completed on or

before the effective date hereof. Such committee meeting was held on October 15, 1974.

(b) Order. (1) The quantity of lemons grown in California and Arizona which may be handled during the period October 20, 1974, through October 26, 1974, is hereby fixed at 210,000 cartons.

(2) As used in this section, "handled", and "carton(s)" have the same meaning as when used in the said amended marketing agreement and order.

(Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674)

Dated: October 16, 1974.

FRED DUNN,  
Acting Director, Fruit and  
Vegetable Division, Agricul-  
tural Marketing Service.

[FR Doc.74-24541 Filed 10-17-74;11:55 pm]

#### PART 932—OLIVES GROWN IN CALIFORNIA

##### Expenses, Rate of Assessment, and Carryover of Unexpended Funds

This document authorizes \$765,495.50 of Olive Administrative Committee expenses, under Marketing Order No. 932, for the 1974-75 fiscal year and fixes the rate of assessment at \$15.00 per ton of regulated olives to be paid to the committee by each first handler as his pro rata share of such expenses. It also authorizes the carryover, as a committee reserve, of unexpended assessment income from fiscal 1973-74 and prior years.

On September 18, 1974, notice of rulemaking was published in the FEDERAL REGISTER (39 FR 33537) regarding proposed expenses and the related rate of assessment for the fiscal year ending August 31, 1975, pursuant to the marketing agreement, as amended, and Order No. 932, as amended (7 CFR Part 932), which regulate the handling of olives grown in California, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674). This notice allowed interested persons until October 10, 1974, to submit written data, views, or arguments pertaining to the proposal. None were submitted. After consideration of all relevant matter presented, including the proposals set forth in such notice which were submitted by the Olive Administrative Committee established pursuant to said marketing agreement and order, it is hereby found and determined:

(a) That the Secretary of Agriculture find that the expenses that are reasonable and likely to be incurred by the Olive Administrative Committee during the period September 1, 1974, through August 31, 1975, will amount to \$765,495.50

(b) That the Secretary of Agriculture fix the rate of assessment for said period, payable by each first handler in accordance with § 932.39, at \$15.00 per tons of olives.

(c) That unexpended assessment funds in excess of expenses incurred during the fiscal year ended August 31, 1974,

and prior years shall be carried over as a reserve in accordance with the applicable provisions of § 932.40.

Terms used in the amended marketing agreement and order shall, when used herein, have the same meaning as is given to the respective term in said amended marketing agreement and order.

It is hereby further found that good cause exists for not postponing the effective date hereof until 30 days after publication in the FEDERAL REGISTER (5 U.S.C. 553) in that (1) the relevant provisions of said marketing agreement and this part require that the rate of assessment fixed for a particular fiscal year shall be applicable to all assessable olives from the beginning of such year; and (2) such year began on September 1, 1974, and the rate of assessment herein fixed will automatically apply to all assessable olives beginning with such date.

Dated: October 15, 1974.

FLOYD F. HEDLUND,  
Director, Fruit and Vegetable  
Division, Agricultural Market-  
ing Service.

[FR Doc.74-24332 Filed 10-17-74;8:45 am]

[Grapefruit Reg. 15, Amdt. 1]

#### PART 944—FRUITS; IMPORT REGULATIONS

##### Minimum Grade and Size Requirements for Imports of Grapefruit

This amendment continues, after October 20, 1974, current grade and size requirements applicable to imported grapefruit as follows: Imported seeded grapefruit—U.S. No. 1 and  $3\frac{1}{16}$  inches in diameter; seedless grapefruit—Improved No. 2 and  $3\frac{3}{16}$  inches in diameter. The requirements are the same as those applicable to grapefruit produced in Florida and regulated pursuant to Marketing Order No. 905.

Notice was published in the Federal Register on September 26, 1974 (39 FR 34554), that consideration was being given to a proposed amendment which would regulate the importation of grapefruit into the United States. The notice provided that all written data, views, or arguments in connection with the proposed amendment be submitted by October 11, 1974. None were received.

This amendment would be issued pursuant to section 8e of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674). This act requires that whenever specified commodities, including grapefruit, are regulated under a Federal marketing order, the imports of that commodity must meet the same or comparable requirements as those in effect for the domestically-produced commodity. This regulation is the same as the domestic grade and size regulation for grapefruit, issued pursuant to the marketing agreement, as amended, and Order No. 905, as amended (7 CFR Part 905) regulating the handling of oranges, grapefruit, tangerines and tangelos grown in Florida, which becomes effective October 21, 1974.

It is hereby found that good cause exists for not postponing the effective time of the regulatory provisions of this amendment, as hereinafter set forth, beyond that hereinafter specified (5 U.S.C. 553) in that (a) the requirements of this amended import regulation are imposed pursuant to § 8e of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), which makes such requirements mandatory; (b) the grade and size requirements of this amended import regulation are the same as those being made applicable to domestic shipments of grapefruit grown in Florida under amended Grapefruit Regulation 75 (§ 905.556); (c) notice that such action was being considered was published in the September 26, 1974, issue of the FEDERAL REGISTER (39 FR 34554), and no objection to this regulation was received; (d) the provisions of this import regulation are the same as those contained in said notice; (e) notice hereof in excess of three days, the minimum prescribed by said section 8e, is given with respect to this import regulation by prescribing an effective date of October 21, 1974, and (f) such notice is hereby determined, under the circumstances, to be reasonable.

After consideration of all relevant matters presented, including the proposal set forth in the aforesaid notice, and other available information, it is hereby found that the grade and size requirements in effect pursuant to the said amended marketing agreement and order shall apply to grapefruit to be imported.

Order. In § 944.111 (Grapefruit Regulation 15; 39 FR 33306) the provisions of paragraph (a) preceding subparagraph (1) thereof are amended to read as follows (the provisions of paragraph (a) (1) and (a) (2) are included for purposes of clarity):

##### § 944.111 Grapefruit Regulation 15.

(a) On and after October 21, 1974, the importation into the United States of any grapefruit is prohibited unless such grapefruit is inspected and meets the following requirements:

(1) Seeded grapefruit shall grade at least U.S. No. 1 and be of a size not smaller than  $3\frac{3}{4}$  inches in diameter, except that a tolerance for seeded grapefruit smaller than such minimum size shall be permitted, which tolerance shall be applied in accordance with the provisions for the application of tolerances specified in § 51.761 of the United States Standards for Florida Grapefruit; and

(2) Seedless grapefruit shall grade at least Improved No. 2 and be of a size not smaller than  $3\frac{3}{16}$  inches in diameter, except that a tolerance for seedless grapefruit smaller than such minimum size shall be permitted, which tolerance shall be applied in accordance with the provisions for the application of tolerances specified in § 51.761 of the United States Standards for Florida Grapefruit. ("Improved No. 2" shall mean grapefruit grading at least U.S. No. 2 and also meeting the requirements of the U.S. No. 1 grade as to shape (form) and color.)

(Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674)

Dated, October 15, 1974, to become effective October 21, 1974.

FLOYD F. HEDLUND,  
Director, Fruit and Vegetable  
Division, Agricultural Market-  
ing Service.

[FR Doc.74-24418 Filed 10-17-74;8:45 am]

#### PART 989—RAISINS PRODUCED FROM GRAPES GROWN IN CALIFORNIA

##### Desirable Free Tonnage for Natural Thompson Seedless Raisins 1974-75 Crop Year

Notice was published in the September 18, 1974, issue of the FEDERAL REGISTER (39 FR 33537), regarding a proposal to designate a desirable free tonnage for natural Thompson Seedless raisins of 155,000 tons which would be made available as free tonnage during the 1974-75 crop year. Interested persons were afforded an opportunity to submit written data, views, or arguments on the proposal. One written comment was received.

The proposal was unanimously recommended by the Raisin Administrative Committee, hereinafter referred to as the "Committee". The Committee's recommendation was under § 989.54 of the marketing agreement, as amended, and Order No. 989, as amended (7 CFR Part 989), hereinafter referred to collectively as the "order". The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "act".

Free tonnage raisins are generally marketed in Western Hemisphere markets, primarily the United States and Canada. Because of supply or price conditions, no desirable free tonnage for natural Thompson Seedless raisins was designated for the 1972-73 or the 1973-74 crop years. During the most recent five crop years (1967-68 through 1971-72) in which a desirable free tonnage for these raisins was designated, disposition by handlers of free tonnage natural Thompson Seedless raisins in Western Hemisphere markets averaged about 134,265 tons per year.

On October 4, 1974, the Raisin Administrative Committee estimated 1974 production of natural Thompson Seedless raisins at 215,000 tons, and therefore recommended establishment of preliminary free and reserve percentages for the 1974-75 crop year. A notice of proposed rulemaking on establishment of these percentages will be issued soon. The Committee also indicated that, if those percentages are made effective, it would begin offering reserve raisins to handlers at the free tonnage price through December 1974.

The written comment requested the Secretary to disapprove the proposal and declare the entire 1974 crop of natural Thompson Seedless raisins to be free tonnage. The comment also included views on establishment of a reserve volume regulation for natural Thompson Seedless raisins for the 1974-75 crop

year. While designation of a desirable free tonnage is not the action which establishes volume regulation, it is a preliminary step which must be taken before any volume regulation can be established.

It was contended that: Establishing a reserve pool will exert an inflationary effect on the price of raisins in both the domestic and the export market; the Committee's intention of selling reserve tonnage raisins to handlers for export sale at the same price as the free tonnage price will short the supply in domestic markets to the extent that free tonnage is diverted to export; and this year's production is only 15,000 to 20,000 tons greater than the 1973 production and does not justify a reserve pool program on the basis of an excessive supply of raisins.

Designating a desirable free tonnage for natural Thompson Seedless raisins of 155,000 tons would provide an ample supply of those raisins for the Western Hemisphere market. This is much greater than annual shipments to this market in recent years. A field price of \$640 per ton for free tonnage for the 1974 production of natural Thompson Seedless raisins was agreed to between independent handlers and the Raisin Bargaining Association. This is \$60 per ton less than the price of \$700 per ton agreed upon by these principals in 1973. Thus, there is no indication that to establish a desirable free tonnage of 155,000 tons would exert an inflationary influence upon price at the grower level as compared to last year's price. Moreover, the commentator's contention that the Committee's proposal to offer reserve raisins initially at the free tonnage price of \$640 per ton will induce handlers to short their domestic customers by exporting free tonnage is conjecture. Finally, this year's estimated production of natural Thompson Seedless raisins is about 16,250 tons more than the 1973 production of about 198,750 tons of those raisins. Any comment as to whether the 1974 production is of sufficient magnitude so as to warrant establishment of volume regulation for the 1974-75 crop year is more appropriately directed to a proposal to establish free and reserve percentages than to this rulemaking proceeding.

After consideration of all relevant matter presented, including that in the notice, the written comment submitted pursuant to the notice, the information and recommendation of the Committee, and other available information, it is found that designation of a desirable free tonnage for natural Thompson Seedless raisins, as hereinafter set forth will tend to effectuate the declared policy of the act.

It is further found that good cause exists for not postponing the effective time of this action until 30 days after publication in the FEDERAL REGISTER (7 U.S.C. 553) in that: (1) The desirable free tonnage for natural Thompson Seedless raising is for a crop year and the current crop year began September 1, 1974; (2) handlers should be apprised of

the desirable free tonnage as soon as practicable to enable them to plan their operations accordingly; (3) handlers require no advance notice to comply with this action; and (4) no useful purpose would serve by postponing the effective time of this action.

Therefore, Subpart — Supplementary Orders Regulating Handling (§§ 989.201-989.229) is amended by adding a new § 989.223 which reads as follows:

**§ 989.223 Desirable free tonnage.**

The desirable free tonnage designated for natural Thompson Seedless raisins for the 1974-75 crop year is 155,000 tons.

(Secs. 1119, 48 Stat. 31, as amended; 7 U.S.C. 601-674)

Dated: October 15, 1974.

FLOYD F. HEDLUND,  
Director,  
Fruit and Vegetable Division.

[FR Doc. 74-24331 Filed 10-17-74; 8:45 am]

**Title 12—Banks and Banking**  
**CHAPTER VII—NATIONAL CREDIT UNION**  
**ADMINISTRATION**

**PART 760—FLOOD INSURANCE**

Notice is hereby given that the Administrator of the National Credit Union Administration, pursuant to the authority conferred by section 120, 73 Stat. 635, 12 U.S.C. 1766, and section 209, 84 Stat. 1014, 12 U.S.C. 1789, hereby redesignates § 701.32 (12 CFR 701.32) by establishing a new Part 760 (12 CFR Part 760), and further repeals the present § 701.32(g) (12 CFR 701.32(g)) and in lieu thereof adds a new § 760.2(e) (12 CFR 760.2(e)) as set forth below.

The repeal of § 701.32(g) is for the purpose of removing language irrelevant to the regulation itself. The new paragraph will implement requirements delineated in section 816(a) of the Housing and Community Development Act of 1974 (Pub. L. 93-383; 88 Stat. 739).

The redesignation of § 701.32 by establishing a new Part 760 is for technical reasons only. With the exception of the format of Part 760 and the addition of § 760.2(e), no substantive amendments have been made to § 701.32.

The comment period specified in section 553(d) of Title 5 of the United States Code (5 U.S.C. 553(d)) is not included herein due to the requirement set forth in the Housing and Community Development Act of 1974, supra, that a regulation be promulgated requiring compliance with the provisions contained therein after the expiration of thirty days following the date of its enactment.

**Effective date.** The changes set forth below are effective immediately.

HERMAN NICKERSON, Jr.,  
Administrator.

OCTOBER 11, 1974.

Sec.  
760.0 Scope.  
760.1 Definitions.  
760.2 Implementation.

**AUTHORITY:** Sec. 120, 73 Stat. 635 (12 U.S.C. 1766), and Sec. 209, 84 Stat. 1014 (12 U.S.C. 1789).

**§ 760.0 Scope.**

In enacting the Flood Disaster Protection Act of 1973 (87 Stat. 975) on December 31, 1973, the Congress found that annual losses throughout the nation from floods and mudslides are increasing at an alarming rate, partly as a result of the accelerating development of, and concentration of population in, areas of flood hazards. The Congress further found that a component part of this accelerating development has been the availability of financial assistance, including real estate loans by Federal credit unions, federally-insured State credit unions and other financial institutions, thus encouraging construction in flood prone areas. Accordingly, the Flood Disaster Protection Act imposes certain conditions on the making of such loans by federally supervised, regulated or insured credit unions and other financial institutions, requiring in substance that the property securing such loans be covered by adequate flood insurance. To implement these requirements, the Federal financial supervisory agencies designated in the Act, including the National Credit Union Administration, were directed, pursuant to section 102(b) and 202(b) of the Act, to issue appropriate regulations with respect to institutions under their supervisory jurisdiction. This regulation is intended to comply with that legislative mandate and is issued under sections 102(b), 102(c), 202 (b), and 205(b) of the Flood Disaster Protection Act of 1973 (87 Stat. 978, 982).

**§ 760.1 Definitions.**

(a) "Community" means a state or political subdivision thereof which has building code jurisdiction over a particular area having special flood hazards.

(b) "Participating" for the purpose of this section means a community participating in the national flood insurance program is a community which has complied with the requirements for participation as set forth in § 1909.22 of the regulations of the Federal Insurance Administration of the Department of Housing and Urban Development (24 CFR 1909.22) and in which flood insurance is currently being sold.

**§ 760.2 Implementation.**

(a) After March 2, 1974, no Federal credit union nor federally-insured State credit union shall make, increase, extend or renew any loan secured by improved real estate or a mobile home located or to be located in an area that has been identified by the Secretary of Housing and Urban Development as an area having special flood hazards and in which flood insurance has been made available under the National Flood Insurance Act of 1968, unless the building or mobile home and any personal property securing such loan is covered for the term of the loan by flood insurance in an amount at least equal to the outstanding principal

balance of the loan or to the maximum limit of coverage made available with respect to the particular type of property under the Act, whichever is less.

(b) Notwithstanding the provisions of paragraph (c) of this section, flood insurance shall not be required on any State-owned property that is covered under an adequate policy of self-insurance satisfactory to the Secretary of Housing and Urban Development who shall publish and periodically revise the list of states falling within the exemption provided in this paragraph.

(c) On and after July 1, 1975, no Federal credit union nor federally-insured State credit union shall make, increase, extend, or renew any loan secured by improved real estate or a mobile home located or to be located in an area that has been identified by the Secretary of Housing and Urban Development as an area having special flood hazards, unless the community in which such area is situated is then participating in the national insurance program.

(d) Each Federal credit union and each federally-insured State credit union shall maintain in connection with all loans secured by improved real estate, or a mobile home, sufficient records to indicate the method used by the credit union to determine whether or not such loans fall within the provisions of paragraphs (c) and (e) of this section.

(e) Each Federal credit union and each federally-insured State credit union shall, as a condition of making, increasing, extending, or renewing any loan secured by improved real estate or a mobile home located or to be located in an area that has been identified by the Secretary of Housing and Urban Development as an area having special flood hazards, notify the member-borrower of such special flood hazards, in writing, a reasonable period in advance of the signing of the purchase agreement, lease or other documents involved in the transaction. In lieu of the notification required in this section each Federal credit union and each federally-insured State credit union may obtain satisfactory written assurances from the seller or lessor, and acknowledged by the borrower, that such seller or lessor has notified the borrower, prior to the execution of any agreement for sale or lease, that the property security the loan is in an area so identified.

[FR Doc.74-24285 Filed 10-17-74;8:45 am]

#### Title 14—Aeronautics and Space

### CHAPTER I—FEDERAL AVIATION ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

[Airworthiness Docket No. 74-WE-1-AD, Amdt. 39-1994]

#### PART 39—AIRWORTHINESS DIRECTIVES McDonnell Douglas DC-3 Series Airplanes

Amendment 39-1784 (39 FR 4757), AD 74-4-2, requires the installation of a spoiler handle lockout during flight. In addition, in the interim period required to manufacture and install the spoiler

handle lockouts, certain inspections, reports and a restriction to the use of the spoilers were required. After issuing Amendment 39-1784, due to service experience, the agency determined that in aircraft incorporating the Mark II antiskid system, certain electrical power surges in the system that automatically deploys the spoilers upon main gear wheel spinup can cause stepping of the actuation motor and eventual unwanted unlocking of the spoiler handle lockout during flight. Therefore, the AD is being amended to require certain electronic modifications to the spoiler card in the Mark II antiskid control box.

Since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable and good cause exists for making this amendment effective in less than 30 days.

In consideration of the foregoing and pursuant to the authority delegated to me by the Administrator (31 FR 13697), § 39.13 of Part 39 of the Federal Aviation Regulations, Amendment 39-1784 (39 FR 4757), AD 74-4-2, is amended by changing item (8) and adding a new item (9) at the end thereof.

(8) Upon completion of items (1) through (7) of this A.D., Amendment 39-112, (35 FR 18454) AD 70-25-2, is no longer mandatory. The placard and AFM limitation described in AD 70-25-2 may be removed.

(9) Prior to February 15, 1975, on those airplanes incorporating the Hydro-Aire Mark II antiskid system, unless already accomplished, modify the spoiler card in the antiskid control box in accordance with McDonnell Douglas Service Bulletin 27-251, Revision 5, dated October 3, 1974, or later FAA-approved revisions, or an equivalent installation approved by the Chief, Aircraft Engineering Division, FAA Western Region.

This amendment becomes effective October 23, 1974.

(Secs. 313(a), 601, 603, Federal Aviation Act of 1958, (49 U.S.C. 1354(a), 1421, 1423); sec. 6(c), Department of Transportation Act, (49 U.S.C. 1655(c)))

Issued in Los Angeles, Calif., on October 9, 1974.

W. R. FRIHSE,  
Acting Director,  
FAA Western Region.

[FR Doc.74-24263 Filed 10-17-74;8:45 am]

[Airworthiness Docket No. 74-WE-34-AD, Amdt. 39-1995]

#### PART 39—AIRWORTHINESS DIRECTIVES McDonnell Douglas DC-9 Airplanes

A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive requiring repetitive inspections of the welded aft engine isolator mount on McDonnell Douglas Model DC-9 Airplanes was published in the FEDERAL REGISTER 39 FR 27309.

Interested persons have been afforded an opportunity to participate in the making of the amendment. The Air Transport Association submitted the only comment received in response to this notice.

The ATA comment recommended that the repetitive inspection interval of 750 hours should be extended to 950 hours so that the inspections could be conducted during the normal maintenance checks of one member airline. The commentator stated that due to the redundancy of the engine mount and cowl structure no unsafe condition would be created by extending the interval between inspections.

The FAA does not agree that the interval between inspections can be safely extended to 950 hours. One failure of the upper lug of the aft engine isolator mount occurred 1054 hours after an inspection of the mount. The lower lug of the aft engine isolator mount is the only structure attaching the aft half of the engine to the aircraft when the upper lug has failed.

In consideration of the foregoing and pursuant to the authority delegated to me by the Administrator (31 FR 13697), § 39.13 of Part 39 of the Federal Aviation Regulations is amended by adding the following new airworthiness directive:

McDONNELL DOUGLAS. Applies to all Model DC-9 (-10, -20, -30, -40 and military C-9A and C-9B Series) Airplanes, equipped with welded aft engine isolator mount(s), P/N K2219-6SA3, certificated in all categories.

To detect cracks in the welded aft engine mounts, accomplish the following:

For airplanes equipped with welded aft engine isolator mount(s) with more than 4,000 hours time-in-service on the effective date of this AD, within the next 300 hours time-in-service, unless previously accomplished within the last 450 hours time-in-service, and thereafter at intervals not to exceed 750 hours time-in-service, inspect the aft engine isolator mount per McDonnell Douglas All Operators' Letter AOL 9-780, dated December 13, 1973, AOL 9-780A dated March 27, 1974, AOL 9-780B dated April 8, 1974, or an equivalent approved by the Chief, Aircraft Engineering Division, FAA Western Region. If any cracks are detected replace the part before further flight with a forged part, P/N's K2219-6SA5 and K2219-7SA3, or an uncracked welded part K2219-6SA3. Upon installation of a forged part the requirements of this A.D. are terminated.

NOTE: (A) For the purposes of this A.D. if the time-in-service hours of the aft engine isolator mount cannot be established the part will be considered to have the same number of time-in-service hours as the airplane on which it is installed.

(B) The airplane may be flown in accordance with FAR's 21.197 and 21.193 to a base where the inspection can be performed.

This amendment becomes effective November 25, 1974.

(Secs. 313(a), 601, 603, Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421, and 1423); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)))

Issued in Los Angeles, Calif., on October 9, 1974.

W. R. FRIHSE,  
Acting Director,  
FAA Western Region.

[FR Doc.74-24264 Filed 10-17-74;8:45 am]

[Docket No. 74-SO-89; Amdt. 39-1996]

**PART 39—AIRWORTHINESS DIRECTIVES**

**Pan Avion Model C-30A( ) Life Rafts**

A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive requiring inspection and rework of the inflation system on Pan Avion Model C-30A( ) life rafts was published in the *FEDERAL REGISTER*, 39 FR 32333.

Interested persons have been afforded an opportunity to participate in the making of the amendment. One comment was received requesting that the compliance time be extended from 2 months to 120 days. Based on current available scheduling information, the 2 months compliance time appears reasonable, and remains unaltered.

In consideration of the foregoing, and pursuant to the authority delegated to me by the Administrator (31 FR 13697), § 39.13 of the Federal Aviation Regulations is amended by adding the following new airworthiness directive:

**PAN AVION. Applies to Pan Avion Model C-30A Life Rafts Serial Numbers 81 through 716.**

Compliance required as indicated.

To prevent loss of pressure in the inflation system on the rafts, accomplish the following:

(a) Within 2 months time in service after the effective date of this AD, unless the modification described in paragraph (c) below has been accomplished, perform a pressure check of the gas regulator assembly, P/N 11402-11, and gas bottle.

(1) When pressure measures less than 2750 psig at 70° F, or an equivalent pressure at other temperatures, before return to service, comply with paragraph (c).

(2) When pressure measures more than 2750 psig at 70° F, or an equivalent pressure at other temperatures, within the next 30 days, comply with paragraph (c).

(b) Upon request of the operator, an FAA Maintenance Inspector, subject to prior approval of the Chief, Engineering and Manufacturing Branch, FAA Southern Region, may adjust the inspection and/or modification times specified in this AD to permit compliance at an established inspection period of the operator if the request contains substantiating data to justify the increase for the operator.

(c) Modify the inflation system in accordance with paragraph 4 of Pan Avion Service Department Bulletin No. 26-74 dated March 25, 1974 or later FAA approved revision, or in an equivalent manner approved by the Chief, Engineering and Manufacturing Branch, FAA Southern Region.

This amendment becomes effective November 1, 1974.

(Secs. 313(a), 601, 603, Federal Aviation Act of 1958, (49 U.S.C. 1354(a), 1421, 1423); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)))

Issued in East Point, Ga., on October 9, 1974.

**DUANE W. FREER,**  
*Acting Director,*  
*Southern Region.*

[FR Doc.74-24262 Filed 10-17-74; 8:45 am]

[Airspace Docket No. 74-WA-24]

**PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS**

**Change of Names for Reporting Points; Correction**

On Monday, August 26, 1974, FR Doc. 74-19643 was published in the *FEDERAL REGISTER* (39 FR 30839) effective November 7, 1974.

This document amended Part 71 of the Federal Aviation Regulations, in part, by changing certain reporting point names to five-letter words and adding geographic coordinates to their descriptions.

In the description of the "HERIN:" reporting point, the Naptucket, Mass., 060° radial was erroneously cited rather than the 066° radial. Therefore, action is taken herein to correct the radial required to retain the present position of the reporting point.

Since this action merely corrects a minor typographical error without altering the waypoint location, it is a minor matter on which the public would have no particular desire to comment. Therefore, notice and public procedure thereon are unnecessary, and good cause exists for making this amendment effective upon publication in the *FEDERAL REGISTER*.

In consideration of the foregoing, effective on October 18, 1974, FR Doc. 74-19643 (39 FR 30839) is amended as hereinafter set forth.

In paragraph numbered 25 the penultimate line is deleted and "066° radial, Long. 67°47'30" W.)" is sub-" is substituted therefor.

(Sec. 307(a), Federal Aviation Act of 1958, (49 U.S.C. 1348(a)); sec. 6(c), Department of Transportation Act, (49 U.S.C. 1655(c)))

Issued in Washington, D.C., on October 11, 1974.

**GORDON E. KEWER,**  
*Acting Chief, Airspace and*  
*Air Traffic Rules Division.*

[FR Doc.74-24266 Filed 10-17-74; 8:45 am]

[Docket No. 14053, Amdt. 938]

**PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES**

**Miscellaneous Amendments**

This amendment to Part 97 of the Federal Aviation Regulations incorporates by reference therein changes and additions to the Standard Instrument Approach Procedures (SIAPs) that were recently adopted by the Administrator to promote safety at the airports concerned.

The complete SIAPs for the changes and additions covered by this amendment are described in FAA Forms 3139, 8260-3, 8260-4, or 8260-5 and made a part of the public rule making dockets of the FAA in accordance with the procedures set forth in Amendment No. 97-696 (35 FR 5609).

SIAPs are available for examination at the Rules Docket and at the National Flight Data Center, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591. Copies of SIAPs adopted in a particular region are also available for examination at the headquarters of that region. Individual copies of SIAPs may be purchased from the FAA Public Document Inspection Facility, HQ-405, 800 Independence Avenue, SW., Washington, D.C. 20591 or from the applicable FAA regional office in accordance with the fee schedule prescribed in 49 CFR 7.85. This fee is payable in advance and may be paid by check, draft or postal money order payable to the Treasurer of the United States. A weekly transmittal of all SIAP changes and additions may be obtained by subscription at an annual rate of \$150.00 per annum from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. Additional copies mailed to the same address may be ordered for \$30.00 each.

Since a situation exists that requires immediate adoption of this amendment, I find that further notice and public procedure hereon is impracticable and good cause exists for making it effective in less than 30 days.

In consideration of the foregoing, Part 97 of the Federal Aviation Regulations is amended as follows, effective on the dates specified:

1. Section 97.23 is amended by originating, amending, or canceling the following VOR-VOR/DME SIAPs, effective November 28, 1974:

Baltimore, Md.—Baltimore-Washington Int'l. Arpt., VOR Rwy 28, Amdt. 14.  
Cut Bank, Mont.—Cut Bank Arpt., VOR Rwy 31, Amdt. 9.  
Napa, Calif.—Napa County Arpt., VOR Rwy 6, Amdt. 6.  
Ogden, Utah—Ogden Municipal Arpt., VOR-2, Rwy 07 (TAC), Orig., canceled.  
Ogden, Utah—Ogden Municipal Arpt., VOR Rwy 7, Amdt. 1.  
Riverside, Calif.—Riverside Municipal Arpt., VOR-A, Amdt. 3.  
Riverside, Calif.—Riverside Municipal Arpt., VOR Rwy 9, Amdt. 7.  
Roswell, N.M.—Roswell Industrial Air Center Arpt., VOR-A, Amdt. 2.

2. Section 97.25 is amended by originating, amending, or canceling the following SDF-LOC-LDA SIAPs, effective November 28, 1974:

Houston, Tex.—Houston Intercontinental Arpt., LOC/DME(BC) Rwy 32, Amdt. 1.

• • • effective October 31, 1974:

Fargo, N.D.—Hector Field, LOC(BC) Rwy 17, Amdt. 6.  
Staunton, Va.—Shenandoah Valley Arpt., LOC Rwy 4, Amdt. 1, canceled.

• • • effective October 1, 1974:

Reedsville, Pa.—Mifflin County Arpt., LOC Rwy 6, Amdt. 1.

3. Section 97.27 is amended by originating, amending, or canceling the following NDB/ADF SIAPs, effective November 28, 1974:

Lubbock, Tex.—Lubbock Regional Arpt., NDB Rwy 17R, Amdt. 12.  
Roswell, N.M.—Roswell Industrial Air Center Arpt., NDB Rwy 21, Amdt. 8.

\* \* \* effective November 7, 1974:

Jesup, Ga.—Jesup-Wayne County Arpt., NDB Rwy 10, Orig.

\* \* \* effective October 31, 1974:

Fargo, N.D.—Hector Field, NDB Rwy 17, Amdt. 7.

Staunton, Va.—Shenandoah Valley Arpt., NDB Rwy 4, Amdt. 2.

Vicksburg, Miss.—Vicksburg Municipal Arpt., NDB Rwy 1, Amdt. 2.

\* \* \* effective October 8, 1974:

Chicago, Ill.—Chicago O'Hare Int'l. Arpt., NDB Rwy 32R, Amdt. 11.

\* \* \* effective October 1, 1974:

Columbia-Mt. Pleasant, Tenn.—Maury County Arpt., NDB Rwy 23, Amdt. 3.

4. Section 97.29 is amended by originating, amending, or canceling the following ILS SIAPs, effective November 28, 1974:

Atlanta, Ga.—The William B. Hartsfield Atlanta Int'l. Arpt., ILS Rwy 9R, Amdt. 7.

Lubbock, Tex.—Lubbock Regional Arpt., ILS Rwy 17R, Amdt. 12.

Olympia, Wash.—Olympia Arpt., ILS Rwy 17, Amdt. 2.

Roswell, N.M.—Roswell Industrial Air Center Arpt., ILS Rwy 21, Amdt. 7.

Salt Lake City, Utah—Salt Lake City Int'l. Arpt., ILS Rwy 34L, Amdt. 31.

\* \* \* effective November 21, 1974:

Albany, N.Y.—Albany County Arpt., ILS Rwy 1, Amdt. 1.

\* \* \* effective October 31, 1974:

Fargo, N.D.—Hector Field, ILS Rwy 35, Amdt. 24.

Staunton, Va.—Shenandoah Valley Arpt., ILS Rwy 4, Orig.

\* \* \* effective October 8, 1974:

Chicago, Ill.—Chicago O'Hare Int'l. Arpt., ILS Rwy 32R, Amdt. 9.

5. Section 97.31 is amended by originating, amending, or canceling the following RADAR SIAPs, effective November 28, 1974.

Lubbock, Tex.—Lubbock Regional Arpt., RADAR-1, Amdt. 3.

\* \* \* effective October 31, 1974:

Fargo, N.D.—Hector Field, RADAR-1, Amdt. 1.

6. Section 97.33 is amended by originating, amending, or canceling the following RNAV SIAPs, effective November 28, 1974:

Hillsboro, Oreg.—Portland-Hillsboro Arpt., RNAV Rwy 13, Orig.

Napa, Calif.—Napa County Arpt., RNAV Rwy 36L, Amdt. 1.

Racine, Wis.—Horlick-Racine Arpt., RNAV Rwy 22, Orig.

Roswell, N.M.—Roswell Industrial Air Center Arpt., RNAV Rwy 3, Amdt. 2.

**Correction:** In Docket No. 14031, Amendment 936 to Part 97 of the Federal Aviation Regulations, published in the FEDERAL REGISTER dated October 4, 1974, on page 35786, under § 97.23 effective date of Lumberton, N.C.—Lumberton Municipal Arpt., VOR Rwy. 5, Orig., and VOR Rwy 13, Orig., to December 5, 1974.

(Secs. 307, 313, 601, 1110, Federal Aviation Act of 1948; (49 U.S.C. 1438, 1354, 1421, 1510); sec. 6(c), Department of Transportation Act, (49 U.S.C. 1655(c), 5 U.S.C. 552(a)(1)))

Issued in Washington, D.C., on October 10, 1974.

JAMES M. VINES,  
Chief,  
Aircraft Programs Division.

NOTE: Incorporation by reference provisions in §§ 97.10 and 97.20 (35 FR 5610) approved by the Director of the Federal Register on May 12, 1969.

[FR Doc. 74-24265 Filed 10-17-74; 8:45 am]

#### Title 16—Commercial Practices CHAPTER I—FEDERAL TRADE COMMISSION

[Docket No. C-2528]

#### PART 13—PROHIBITED TRADE PRACTICES

Arlen Realty and Development Corp., et al.

Subpart—Advertising falsely or misleadingly: § 13.70 *Fictitious or misleading guarantees*; § 13.135 *Nature of product or service*; § 13.155 *Prices*; 13.155-70 *Percentage savings*; 13.155-95 *Terms and conditions*; 13.155-100 *Usual as reduced, special, etc.*; § 13.160 *Promotional sales plans*. Subpart—Delaying or withholding corrections, adjustments or action owed: § 13.677 *Delaying or failing to deliver goods or provide services or facilities*. Subpart—Failing to maintain records: § 13.1051 *Failing to maintain records*; 13.1051-20 *Adequate*. Subpart—Misrepresenting oneself and goods—Goods: § 13.1647 *Guarantees*; § 13.1685 *Nature*—Prices: § 13.1823 *Terms and Conditions*; § 13.1825 *Usual as reduced or to be increased*. Promotional sales plans: § 13.1830 *Promotional sales plans*—Services: § 13.1843 *Terms and conditions*. Subpart—Neglecting, unfairly or deceptively, to make material disclosure: § 13.1857 *Instruments' sale to finance companies*; § 13.1870 *Nature*; § 13.1882 *Prices*; § 13.1905 *Terms and conditions*; 13.1905-50 *Sales contract*. Subpart—Securing signatures wrongfully: § 13.2175 *Securing signatures wrongfully*.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45) [Cease and desist order, Arlen Realty and Development Corporation, et al., New York, N.Y., Docket C-2528, Aug. 20, 1974]

*In the Matter of Arlen Realty and Development Corporation, a Corporation, and Charles C. Bassine, and Leonard Blackman, Individually and as Officers or Directors of Said Corporation; and E. J. Korvette, Inc., a Corporation, and Mannix Industries, Inc., a Corporation, Doing Business as The E. J. Korvette Home Improvement Department, and Mitchell Maged, Joseph G. Benjamin, Saul A. Stitch, Arnold P. Mandel and Mark Mitchell, Individually and as Officers or Directors of Said Corporation*

Consent order requiring a New York City development corporation and two of its subsidiaries, among other things to cease making deceptive claims concerning the price, quality or guarantee of home improvement products or services; and failing to maintain adequate records to substantiate advertised claims. Further respondents are required to maintain a customer relations department for servicing customer inquiries, complaints and requests for contract adjustments or replacement of faulty products or services; to institute a continuing surveillance program to see that home improvement contractors and employees abide by the order; to preserve all rights and defenses of customers purchasing home improvements on credit if their notes are assigned to third parties; and to cease acting in a manner not in accord with the Trade Regulation Rule (16 CFR Part 429, 37 FR 22934) relating to the Cooling-Off Period for Door-to-Door Sales.

The order to cease and desist, including further order requiring report of compliance therewith, is as follows:

*It is ordered*, That Arlen Realty & Development Corporation, a corporation, and its officers, and E. J. Korvette, Inc., a corporation and Mannix Industries, Inc., a corporation, and Joseph G. Benjamin, Mark Mitchell, and Mitchell Maged, individually and as officers or directors of said corporation, and respondents' agents, representatives, employees, successors and assigns directly or through any corporation, subsidiary, division or other device, in connection with the advertisement, offering for sale, sale or distribution of home improvement products or services in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using in any manner, a sales plan, scheme or device wherein false, misleading or deceptive statements or representations are made, directly or by implication, in order to obtain leads or prospects for the sale of, or to induce purchases of goods or services.

2. Employing any claim or representation, directly or indirectly, to obtain leads for or to induce sales of goods or

<sup>1</sup> Copies of the complaint and decision and order filed with the original document.

services without having in their possession evidence adequate to support a reasonable basis for such claim or representation.

3. Failing to disclose fully, both orally and in writing, prior to the execution of any contracts or retail installment applications, the nature and description of the work, services and products, including brand names and model numbers where applicable, to be provided and the total price thereof.

4. Failing to perform all contracts relating to home improvement products and services; or failing to undertake the delivery or performance of all home improvement products and services upon the terms and conditions and at the prices agreed upon.

5. Representing, directly or by implication, that any of respondents' products or services are guaranteed unless the nature and extent of the guarantee, the identity of the guarantor, and the manner in which the guarantor will perform thereunder are clearly and conspicuously disclosed; and unless respondents promptly and fully perform all of their obligations under the terms of each such guarantee.

6. Representing, directly or by implication, that any price for respondents' products or services is a special or reduced price, unless such price constitutes a significant reduction from an established selling price at which such products have been sold in substantial quantities by respondents in the recent, regular course of their business, or misrepresenting, in any manner, the savings available to purchasers.

7. Failing to maintain adequate records (a) which disclose the facts upon which any savings claims, including former pricing claims and comparative value claims, and similar representations of the type described in this Order are based, and (b) from which the validity of any savings claims, including former pricing claims and comparative value claims, and similar representations of the type described in this Order can be determined.

8. Representing, directly or indirectly, that purchasers or products or services will receive certain brand name products, or products or services of a certain type, quality, style or model unless (i) such are available for sale and sold or delivered if ordered or (ii) such were available for sale at the time the customer's order was taken; or misrepresenting in any manner the nature, scope or effectiveness of such products or services.

9. Providing home improvement products or services while failing to (a) maintain a customer relations department for the full and expeditious serving of customer inquiries and complaints and requests for contract adjustments or replacement of faulty products or services, to which all purchasers of home improvement products and services are directed to submit inquiries and complaints with respect thereto, which department shall be supervised and staffed by persons other than those responsible for providing the products and services and (b)

indicate prominently on all contracts for products or services the fact that all requests and inquiries should be directed to the customer relations department referred to in subparagraph (a) above and the telephone number and mailing address thereof.

10. Further, directly or indirectly, engaging in the business of providing termite control or waterproofing services from the date of this Order without the written approval of the Federal Trade Commission. For purposes of this paragraph, respondents shall not be deemed to be engaged in providing termite control or waterproofing service in connection with the providing of goods or services to any customer with whom a contract therefor was made before the date of this order.

11. Inducing or causing purchasers or prospective purchasers of products or services to sign blank or partially filled-in completion certificate or other legal instruments or documents; or misrepresenting, in any manner, the true nature or effect of such documents.

12. Assigning, selling or otherwise transferring notes, contracts or other documents evidencing a purchasers' indebtedness, unless any rights or defenses which the purchaser has and may assert against respondents are preserved and may be asserted against any assignee or subsequent holder of such note, contract or other document evidencing the indebtedness.

13. Failing to include the following statement clearly and conspicuously on the face of any note, contract or other instrument of indebtedness executed by or on behalf of respondents' customers:

**Notice**

Any holder takes this instrument subject to the terms and conditions of the contract which gave rise to the debt evidenced hereby, any contractual provision or other agreement to the contrary notwithstanding.

14. Acting in a manner which does not accord with the requirements of the Trade Regulation Rule (a copy of which is attached hereto as Exhibit A) set forth in 16 CFR Part 429; 37 FR 22934, and any amendments thereto; it being expressly agreed that the requirements of that rule shall apply notwithstanding the repeal or invalidity thereof, and that respondents accept the application of the provisions set forth in that rule to all sales subject to this order, including those which do not fall within the Rule's definition of door-to-door sales.

*It is further ordered,* That respondents deliver by registered mail a copy of this order to each of their operating divisions and departments and to each contractor, subcontractor, agent, representative, licensee, franchisee, and employee presently or in the future engaged in the consummation of any extension of consumer credit or engaged in the offering for sale or sale of any product or service, or in any aspect of the preparation, creation or placing of advertising; and that respondents secure a signed statement acknowledging receipt of said order from each such person.

*It is further ordered,* That respondents institute a program of continuing surveillance adequate to reveal whether the business operations of each of the aforesaid persons and firms conform to requirements of this order; give prompt warning against the initiation or continuance of acts or practices prohibited by this order to any of the aforesaid persons or firms discovered to be planning or engaging in any such prohibited act or practice; and discontinue dealing with any of such persons or firms if they, after warning, are found to have initiated or continued any act or practice prohibited by this Order.

*It is further ordered,* That respondents or their successors or assigns notify the Commission at least 30 days prior to any proposed change in any of the corporate respondents such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or corporate affiliates or any other change in the corporate respondents which may affect compliance obligations arising out of this Order.

*It is further ordered,* That the individual respondents named herein promptly notify the Commission of the discontinuance of their present business or employment and of their affiliation with a new business or employment. Such notice shall include respondents' current business address and a statement as to the nature of the business or employment in which they are engaged as well as a description of their duties and responsibilities.

*It is further ordered,* That the respondents herein shall, within sixty (60) days after service upon them of this order file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with this order.

Decision and order issued by the Commission August 20, 1974.

VIRGINIA M. HARDING,  
Acting Secretary.

[FR Doc.74-24275 Filed 10-17-74; 8:45 am]

**Title 23—Highways**

**CHAPTER I—FEDERAL HIGHWAY ADMINISTRATION, DEPARTMENT OF TRANSPORTATION**

**PART 650—BRIDGES, STRUCTURES, AND HYDRAULICS<sup>1</sup>**

**National Bridge Inspection Standards; Updating Reference to Recording and Coding Guide**

The purpose of this amendment to the National Bridge Inspection Standards is to update the reference, in § 650.311 of the standards, to a guide issued by the Federal Highway Administration and used by the States to code data about their bridges as they are required to do under the Standards. Section 650.311(b) of the standards makes reference to a

<sup>1</sup>Redesignated at 39 FR 29174, August 14, 1974.

Coding Guide that was distributed by the Federal Highway Administration upon its publication in April of 1971. The April 1971 guide has since been superseded by a new edition issued in July 1972. Accordingly, the reference to the April 1971 guide is being amended to refer to the July 1972 version of the Coding Guide.

In consideration of the foregoing, paragraph (b) of § 650.311 in Part 650 of Title 23, CFR is revised to read as follows:

**§ 650.311 Inventory.**

(b) Under the Standards certain structure inventory and appraisal data must be collected and retained within the various departments of the State organization for collection by the Federal Highway Administration as needed. A tabulation of these required data is contained in the structure inventory and appraisal sheet distributed by the Federal Highway Administration along with its Coding Guide in July of 1972. Annual reporting procedures will be developed by the Federal Highway Administration in consultation with the State highway departments.

Since this amendment relates to the administration of a program of Federal grants-in-aid, notice and public procedure thereon are unnecessary, and it is effective on the date of issuance set forth below.

(23 U.S.C. 116, 315), sec. 6, Department of Transportation Act (49 U.S.C. 1655), and the delegation of authority at 49 CFR 1.48)

Issued on October 7, 1974.

NORBERT T. TIEMANN,  
Federal Highway Administrator.

[FR Doc.74-24288 Filed 10-17-74;8:45 am]

**Title 29—Labor**

**CHAPTER V—WAGE AND HOUR  
DIVISION, DEPARTMENT OF LABOR**

**PART 697—NEWLY COVERED EMPLOY-  
MENT IN AMERICAN SAMOA**

**Wage Order**

Pursuant to sections 5, 6, and 8 of the Fair Labor Standards Act of 1938 (52 Stat. 1062, 1064, as amended; 29 U.S.C. 205, 206, 208, including the Fair Labor Standards Amendments of 1974 (Pub. L. 93-259; 54 Stat. 35), and Reorganization Plan No. 6 of 1950 (3 CFR 1949-53 Comp., p. 1004), and by means of Administrative Order No. 633 (39 FR 24713), the Secretary of Labor appointed and convened Industry Committee No. 11 for Newly Covered Employment in American Samoa, referred to the Committee the question of the minimum rate or rates of wages to be paid under section 6(b) of the Act to non-agricultural employees and under section 6(a)(5) to agricultural employees, and gave notice of a hearing to be held by the Committee.

Subsequent to an investigation and a hearing conducted pursuant to the notice, the Committee has filed with the Administrator of the Wage and Hour

Division of the Department of Labor a report containing its findings of fact and recommendations with respect to the matters referred to it.

Accordingly, as authorized and required by section 8 of the Fair Labor Standards Act of 1938, Reorganization Plan No. 6 of 1950, and 29 CFR 511.18, the recommendations of Industry Committee No. 11 are hereby published, adding paragraph (m), to § 697.1; Part 697. In addition, paragraphs (k) and (l) are corrected.

As amended, § 697.1 reads as follows:

**§ 697.1 Wage rates.**

(k) *The finance and insurance industry.* (1) The minimum rate for this classification is \$1.27 an hour for the period ending 1 year from the date specified in § 697.3, and \$1.34 an hour thereafter.

(2) The finance and insurance industry includes all banks and trust companies, credit agencies other than banks, holding companies, other investment companies, collection agencies, brokers and dealers in securities and commodity contracts, as well as carriers of all types of insurance, and insurance agents and brokers.

(l) *Miscellaneous industry.* (1) The minimum wage for this industry is \$1.05 an hour.

(2) This industry shall include every activity not included in any other industry defined in this § 697.1.

(m) *1974 coverage classification.* The 1974 coverage industry classifications include all activities to which section 6 of the Act applies solely by reason of the Fair Labor Standards Amendments of 1974.

(i) *Government employees industry.* (1) The minimum rate for this industry is \$1.15 an hour beginning January 1, 1975.

(ii) This industry is defined as an employee of the Government of American Samoa and an employee of any agency or corporation of the Government of American Samoa: *Provided*, That the term shall not include any employee of the United States or its agencies: *Provided further*, That the term shall not include any employee covered by the Fair Labor Standards Act within the wage order category for the hospital and educational institutions industry in American Samoa.

(2) *Miscellaneous activities industry.* (1) The minimum rate for this industry is \$1.05 an hour beginning November 4, 1974.

(ii) This industry is defined as all activities in American Samoa to which section 6 of the Act applies solely by reason of the Fair Labor Standards Amendments of 1974, other than Government employees.

(Secs. 5, 6, 8, 52 Stat. 1062, 1064 as amended; 29 U.S.C. 205, 206, 208)

Signed at Washington, D.C., this 11th day of October 1974.

BETTY SOUTHARD MURPHY,  
Administrator,  
Wage and Hour Division.

[FR Doc.74-24303 Filed 10-17-74;8:45 am]

**Title 40—Protection of Environment**

**CHAPTER I—ENVIRONMENTAL  
PROTECTION AGENCY**

**SUBCHAPTER C—AIR PROGRAMS**

[FRL 254-7]

**PART 52—APPROVAL AND PROMULGA-  
TION OF IMPLEMENTATION PLANS**

**Colorado Implementation Plan for Sulfur  
Oxides**

On May 31, 1972, (37 FR 10846), the Administrator approved the "Air Quality Implementation Plan for State of Colorado" with minor exceptions. The Colorado plan contained a sulfur oxide emission control regulation for which the Administrator promulgated compliance schedules on August 23, 1973, (38 FR 22736).

Notice was issued to advise the public that the State of Colorado submitted (on November 21, 1973) a request to revise the Colorado plan by deleting the sulfur oxide emission control regulation in the May 24, 1974, FEDERAL REGISTER (39 FR 18297). No comments were received in response to this notice.

A review of available air quality and emission data has indicated that the national primary and secondary air quality standards for sulfur oxides is not being violated and that the control of existing sources is not necessary for the maintenance of the national air quality standards within the State of Colorado. Accordingly, the Administrator is approving the requested revision to the Colorado plan and withdrawing the compliance schedules promulgated in 38 FR 22736.

Although control of existing sources of sulfur oxide emissions is not required to maintain the national standards, control of new sources may be necessary. Accordingly, the Colorado sulfur oxide regulation as it applies to new sources remains a part of the Colorado Implementation Plan.

This action is effective on October 18, 1974. The Agency finds that good cause exists for dispensing deferral of the effective date because the regulated sources would otherwise unnecessarily be subject to requirements of compliance schedules.

AUTHORITY: Section 110(a) of the Clean Air Act, as amended, 42 U.S.C. 1857-5(a).

Dated: October 10, 1974.

JOHN QUARLES,  
Acting Administrator.

Subpart G of Part 52 of 40 CFR Chapter I is amended as follows:

**Subpart G—Colorado**

Section 52.320 is amended by revising paragraph (c) to read as follows:

**§ 52.320 Identification of plan.**

(c) Supplemental information was submitted on:

- (1) February 14 and March 20, 1972;
- (2) May 1, 1972, by the Colorado Air Pollution Control Commission;
- (3) May 1, 1972, by the Colorado Air Pollution Control Division;

(4), June 4, 1973 and July 16, 1973;  
(5) November 21, 1973.

§ 52.327 [Reserved]

Section 52.327 is revoked and reserved.  
[FR Doc.74-24250 Filed 10-17-74;8:45 am]

SUBCHAPTER E—PESTICIDE PROGRAMS  
[FRL 282-5]

PART 180—TOLERANCES AND EXEMPTIONS FROM TOLERANCES FOR PESTICIDE CHEMICALS IN OR ON RAW AGRICULTURAL COMMODITIES

Isophorone

A petition (PP 4F1503) was filed by NOR-AM Agricultural Products, Inc., 1275 Lake Ave., Woodstock, IL 60098, in accordance with provisions of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a), proposing establishment of an exemption from the requirement of a tolerance for residues of isophorone (3,5,5-trimethyl-2-cyclohexen-1-one) when used as an inert solvent or cosolvent in postemergence herbicides applied to beets (sugar beets and table beets).

Based on consideration given data submitted in the petition and other relevant material, it is concluded that:

1. The pesticide chemical is useful for the purpose for which the exemption is being established.

2. The exemption established by this order will protect the public health.

Therefore, pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 408(d)(2), 68 Stat. 512; 21 U.S.C. 346a(d)(2)), the authority transferred to the Administrator of the Environmental Protection Agency (35 FR 15623), and the authority delegated by the Administrator to the Deputy Assistant Administrator for Pesticide Programs (39 FR 18805), § 180.1001(d) is amended by revising the item "Isophorone \* \* \*" to read as follows:

§ 180.1001 Exemptions from the requirement of a tolerance.

(d) \* \* \*

Inert ingredients	Limits	Uses
Isophorone		Solvent and cosolvent for formulations used before crop emerges from soil and for postemergence use both on rice before crop begins to head and on beets (sugar beets and table beets).

Any person who will be adversely affected by the foregoing order may on or before November 18, 1974, file with the Hearing Clerk, Environmental Protection Agency, Room 1019E, 4th & M Streets, SW., Waterside Mall, Washington, D.C. 20460, written objections thereto in quintuplicate. Objections shall show wherein the person filing will be adversely affected by the order and specify with particularity the provisions

of the order deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought. Objections may be accompanied by a memorandum or brief in support thereof.

*Effective date.* This order shall become effective on October 18, 1974.

(Sec. 408(d)(2), 68 Stat. 512; 21 U.S.C. 346a(d)(2))

Dated: October 11, 1974.

HENRY J. KOMP,  
Deputy Assistant Administrator  
for Pesticide Programs.

[FR Doc.74-24254 Filed 10-17-74;8:45 am]

Title 45—Public Welfare

CHAPTER II—SOCIAL AND REHABILITATION SERVICE (ASSISTANCE PROGRAMS), DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

PART 205—GENERAL ADMINISTRATION—PUBLIC ASSISTANCE PROGRAMS

Quality Control System

Notice of proposed rule making was published in the FEDERAL REGISTER (39 FR 29935) on August 19, 1974, to announce proposals for amending §§ 205.40 and 205.41 of Chapter II, Title 45 of the Code of Federal Regulations, relating to the program of quality control for Aid to Families with Dependent Children. Final regulations had previously been published on April 6, 1973 (38 FR 8743) after notice of proposed rule making published on December 5, 1972 (37 FR 25853).

The regulations published herewith incorporate the notice of proposed rule making and one clarification prompted by several comments received from the States. Comments were received from approximately 24 State welfare departments, 8 local welfare departments, and 2 interested organizations. Many of the comments related to aspects of the regulations that have been in effect since April 1973 and were not being altered by the notice of proposed rule making. Comments which were responsive to the proposed changes primarily covered the following concerns:

1. Since the base period for determining error rates has been expanded by six months, the schedule for achieving the 3 percent and 5 percent tolerance levels should also be extended by six months.

2. Although the establishment of an underpayment tolerance level of 5 percent is commendable, there should not be any fiscal consequences to be used as an enforcement mechanism.

3. The method of converting the case rate of error to the dollar amount of error is unclear and could be detrimental to some States.

4. The use of the Federal sub-sample in determining State error rates is unclear and should not be required.

Our response to these comments is as follows:

1. Although we will continue to evaluate the tolerance levels in relation to State performance, there are no plans to extend the target date of July 1, 1975. States have been required to have an operational quality control system since 1964 and have been on notice of possible exclusions from Federal financial participation since December 1972. The fact that States have made good progress in implementing corrective action also indicates that the current schedule for error reduction is reasonable.

2. The establishment of an underpayment tolerance level of 5 percent underscores the Department's desire to eliminate underpayments as well as other types of incorrect payments. However, as we stated in the notice of proposed rule making, there is no mechanism for making exclusions from Federal financial participation for amounts underpaid to recipients. Therefore, there will be no fiscal consequences to the States. We continue to believe that the underpayment problem will be resolved in the process of correcting the overpayment problem.

3. Although not specified in the previous regulation, quality control currently converts case error rates to dollar error rates as a prerequisite to determining exclusions from Federal financial participation. State data indicate the amount of dollars incorrectly paid for each overpaid or ineligible case. This figure is projected to the universe in the same manner as the case error. Using the dollar amount of error results in a more realistic statement of the impact of errors in the system and a lower potential exclusion from Federal financial participation for all States.

4. With the adoption of the April 1973 quality control regulations the Social and Rehabilitation Service instituted a re-review of a sample of each State's quality control findings in order to insure nationwide accuracy and comparability of data. The Federal subsample is based on the same policies and procedures which the States follow in making their initial findings. In order to clarify this matter, the final regulations require the States to adjust their initial findings by incorporating the net effect of differences between the State and Federal reviews. The Secretary reserves the right to use an alternate method (use of a regression formula) for determining final State error rates. This method is based on the principle that rates are determined from the Federal subsample but in such a way that they take advantage and make full use of the State sample figures.

Sections 205.40 and 205.41 of Chapter II, Title 45 of the Code of Federal Regulations are revised to read as follows:

§ 205.40 Quality control system.

*State plan requirements.*—A State plan under title IV-A or XIX of the Social Security Act must provide for a system of quality control, which meets Federal specifications, for assuring that assistance is furnished in accordance with

State plan provisions. Under this requirement:

(a) The State agency's system of quality control shall:

(1) Apply the sampling methods, schedules, and instructions prescribed by the Social and Rehabilitation Service;

(2) Conduct field investigations, including a personal interview in all cases which fall within the sample;

(3) Take appropriate corrective action on improperly authorized assistance and system weaknesses;

(4) Report to the Federal Government as prescribed;

(5) Assure access by Federal staff to State and local records, recipients, and third parties.

(b) The State agency shall submit to the Social and Rehabilitation Service, in accordance with Federal instructions;

(1) A description of the State's sampling plan;

(2) A comprehensive plan for analysis of and corrective action on the findings of the quality control system;

(3) Data concerning the case and payment rates of ineligible cases (ineligibility) and the case and payment rates of overpayments and underpayments to eligible cases under title IV-A for the period April 1, 1973, to September 30, 1973 and January 1, 1974 to June 30, 1974 (base period error rate). Such data must be submitted within 60 days of the close of the 6-month period to which they apply; and

(4) A schedule for reducing, under title IV-A, ineligibility, overpayments and underpayments to achieve, by June 30, 1975, a 3 percent tolerance level for ineligibility, a 5 percent tolerance level for overpayments, and a 5 percent tolerance level for underpayments. ("Tolerance level" as used in this section and § 205.41 means cases in error.) The levels to be achieved by the dates specified in subparagraphs (i) and (ii) are referred to as the target error rates in section 205.41. The reduction shall, as a minimum, be according to the following schedule:

(i) By December 31, 1974, one-half of the difference between the base period error rates and the 3 and 5 percent tolerance levels; and

(ii) By June 30, 1975, all of the difference between the base period error rates and the 3 and 5 percent tolerance levels.

(5) Prior to July 1, 1975, a schedule for a further reduction of ineligibility, overpayments and underpayments.

(c) For Guam, Puerto Rico, and the Virgin Islands, this section is also applicable to public assistance under title I, X, XIV, or XVI of the Social Security Act.

§ 205.41 Federal financial participation in relation to erroneous State payments.

(a) There shall be excluded from Federal financial participation in payments as Aid to Families with Dependent Children the proportions of a State's expenditures for ineligibility, represented by the following percentages of cases in error, that are in excess of:

(1) The mid-point between the State's base period error rate and the December 31, 1974 target error rate, for the 6-month period commencing July 1, 1974; and

(2) The mid-point between the State's December 31, 1974 target error rate and the 3 percent tolerance level, for the 6-month period commencing January 1, 1975.

(b) There shall be excluded from Federal financial participation in payments as Aid to Families with Dependent Children the proportions of a State's expenditures for overpayments, represented by the following percentages of cases in error, that are in excess of:

(1) The mid-point between the State's base period error rate and the December 31, 1974 target error rate, for the 6-month period commencing July 1, 1974; and

(2) The mid-point between the State's December 31, 1974 target error rate and the 5 percent tolerance level, for the 6-month period commencing January 1, 1975.

(c) The case rate of error for ineligibility and overpayments shall be converted to the dollar amount of the error in determining the amount to be excluded from Federal financial participation.

(d) The amount to be excluded from Federal financial participation shall be based on error rates determined by the Social and Rehabilitation Service on the basis of State quality control data and may include the Federal quality control sub-sample. The Federal sub-sample may be expanded if so indicated on the basis of guidelines issued by the Social and Rehabilitation Service.

(e) For Guam, Puerto Rico, and the Virgin Islands, this section is also applicable to public assistance under title I, X, XIV, or XVI of the Social Security Act.

*Effective date:* The amendment is effective on October 18, 1974.

(Sec. 1102, 49 Stat. 647 (42 U.S.C. 1302))

(Catalog of Federal Domestic Assistance Program No. 13.761, Public Assistance—Maintenance Assistance (State Aid).)

Dated: October 1, 1974.

JAMES S. DWIGHT, Jr.,  
*Administrator, Social and  
Rehabilitation Service.*

Approved: October 11, 1974.

FRANK CARLUCCI,  
*Acting Secretary.*

[FR Doc.74-24327 Filed 10-17-74;8:45 am]

#### Title 50—Wildlife and Fisheries

### CHAPTER I—U.S. FISH AND WILDLIFE SERVICE, DEPARTMENT OF THE INTERIOR

#### PART 32—HUNTING

Tewaukon National Wildlife Refuge,  
North Dakota

The following special regulation is issued and is effective on October 18, 1974.

§ 32.32 Special regulations; big game; for individual wildlife refuge areas.

#### NORTH DAKOTA

##### TEWAUKON NATIONAL WILDLIFE REFUGE

Public bow hunting of deer on the Tewaukon National Wildlife Refuge, North Dakota, is permitted from Noon November 18, 1974, through December 31, 1974, on the entire refuge as posted. This area, comprising 7,929 acres, is delineated on maps available at refuge headquarters, Cayuga, North Dakota 58013, and from the office of the Area Manager, U.S. Fish and Wildlife Service, Box 1897, Bismarck, North Dakota 58501. Hunting shall be in accordance with all applicable State and Federal Regulations.

The provisions of this special regulation supplement the regulations which govern hunting on wildlife refuge areas generally which are set forth in Title 50, Code of Federal Regulations, Part 32, and are effective through December 31, 1974.

HERBERT G. TROESTER,  
*Refuge Manager, Tewaukon National Wildlife Refuge, Cayuga, North Dakota 58013.*

OCTOBER 10, 1974.

[FR Doc.74-24279 Filed 10-17-74;8:45 am]

#### PART 33—SPORT FISHING

Tewaukon National Wildlife Refuge,  
North Dakota

The following special regulation is issued and is effective on October 18, 1974.

§ 33.5 Special regulations; sport fishing, for individual wildlife refuge areas.

#### NORTH DAKOTA

##### TEWAUKON NATIONAL WILDLIFE REFUGE

Sport fishing on the Tewaukon National Wildlife Refuge, Cayuga, North Dakota, is permitted only on the areas designated by signs as open to fishing. These open areas are Lake Tewaukon, Mann Lake, and Sprague Lake, comprising 1,435 acres, and are shown on maps available at refuge headquarters and from the office of the Area Manager, U.S. Fish and Wildlife Service, Box 1897, Bismarck, North Dakota 58501. Sport fishing shall be in accordance with all applicable State regulations subject to the following special conditions:

(1) The open season for sport fishing on the refuge extends from December 15, 1974 through March 23, 1975, inclusive.

The provisions of this special regulation supplement the regulations which govern fishing on wildlife refuge areas generally which are set forth in Title 50, Code of Federal Regulations, Part 33, and are effective through March 23, 1975.

HERBERT G. TROESTER,  
*Refuge Manager, Tewaukon National Wildlife Refuge, Cayuga, North Dakota 58013*

OCTOBER 9, 1974.

[FR Doc.74-24280 Filed 10-17-74;8:45 am]

**CHAPTER IV—ANADROMOUS FISHERIES  
(DEPARTMENT OF THE INTERIOR-DE-  
PARTMENT OF COMMERCE)**

**CHANGE OF CHAPTER HEADING**

EDITORIAL NOTE: At 39 FR 21055, in the issue of Tuesday, June 18, 1974, Chapter IV was changed to "United States Fish and Wildlife Service, Department of the Interior". Effective immediately, Chapter IV is changed to read as set forth above.

**Title 41—Public Contracts and Property  
Management**

**CHAPTER 101—FEDERAL PROPERTY  
MANAGEMENT REGULATIONS**

**SUBCHAPTER E—SUPPLY AND PROCUREMENT  
[FPMR Amdt. E-153]**

**PART 101-26—PROCUREMENT  
SOURCES AND PROGRAMS**

**Procurement Leadtimes**

Updated information is provided concerning delivery schedules when GSA performs the purchasing services for other agencies.

**Subpart 101-26.5—GSA Procurement  
Programs**

1. Section 101-26.501-4(d) is revised to read as follows:

**§ 101-26.501-4 Procurement time  
schedules.**

(d) *Delivery time.* Delivery times for motor vehicle requirements submitted for monthly consolidated and volume consolidated purchases will range from 240 to 330 days after final dates for consolidation of requisitions provided in § 101-26.501-4 (a) and (b) (1). Included in delivery time estimates are 90 to 105 days required for soliciting and receiving bids, 30 to 45 days for evaluation and award of contracts, and 120 to 180 days from date of award for delivery of vehicles to the consigned locations. For buses, ambulances, and other special duty vehicles procured under monthly consolidated purchases, 240 to 270 days from date of award are usually required to effect delivery. However, special purpose vehicles with unique characteristics, such as certain types of firetrucks, may require longer delivery. In such instances, every effort will be made by GSA to facilitate deliveries and keep the requisitioning agencies informed of any unauthorized delay.

2. Section 101-26.503 is revised as follows:

**§ 101-26.503 Appliances.**

Procurement of appliances by executive agencies shall be accomplished in accordance with the provisions of this

§ 101-26.503. Government contractors authorized by appropriate Government agencies to use GSA supply sources for appliances shall obtain their requirements in accordance with this § 101-26.503.

**Subpart 101-26.48—Exhibits**

Section 101-26.4801 is revised as follows:

**§ 101-26.4801 Procurement leadtimes.**

The following table shall be used in calculation of required delivery dates when GSA is requested to perform the purchasing service:

Commodity class	Commodity class description	Leadtime in calendar days <sup>1</sup>
1000-1399	Ammunition, weapons, and explosives.....	105
1400-1599	Civil aircraft.....	105
1600-2499	Aircraft components, railway equipment, and motor vehicles.....	235
2500-2599	Vehicle parts.....	120
2600-2799	Tires and tubes.....	120
2800-2899	Engines, turbines, and parts.....	105
2900-3199	Engine accessories, power equipment, and bearings.....	155
3200-3499	Woodworking and metalworking machinery.....	220
3500-3599	Service and trade equipment.....	130
3600-3699	Special industry machinery.....	105
3700-3799	Agricultural machinery and equipment.....	270
3800-3999	Construction, materials handling and highway equipment.....	125
4000-4099	Rope, cable, chain, and fittings.....	120
4100-4199	Refrigeration and air conditioning equipment.....	120
4200-4299	Firefighting and safety equipment.....	120
4300-4399	Pumps and compressors.....	105
4400-4499	Furnace, steam plant, and drying equipment.....	225
4500-4599	Plumbing, heating, and related equipment.....	120
4600-5099	Maintenance and repair shop equipment.....	105
5100-5129	Handtools, nonpowered.....	150
5130-5132	Handtools, power driven.....	260
5133-5139	Drill bits, taps, dies, and collets.....	150
5140-5179	Tool and hardware boxes.....	120
5180-5199	Sets, kits, and outfit of tools.....	180
5200-5299	Measuring tools.....	120
5300-5339	Screws, fasteners, and nails.....	90
5340-5344	Miscellaneous hardware.....	120
5345-5399	Disks, stones, and abrasives.....	90
5400-5499	Prefabricated structures.....	190
5500-5599	Lumber.....	165
5600-5799	Construction and building materials.....	120
5800-5899	Communication equipment.....	120
5900-5959	Electrical and electronic components.....	140
5970-5999	Electrical parts.....	190
6000-6199	Electrical wire.....	190
6200-6299	Lighting fixtures and lamps.....	120
6300-6399	Alarm and signal systems.....	120
6400-6599	Medical, dental, and veterinary equipment and supplies.....	135
6600-6699	Instruments and laboratory equipment.....	120
6700-6799	Photographic equipment.....	120
6800-6850	Chemicals and chemical products.....	120

Commodity class	Commodity class description	Leadtime in calendar days <sup>1</sup>
7100-7199	Household furniture.....	280
7110-7124	Office furniture.....	325
7125-7194	Cabinets, lockers, bins, and shelving.....	325
7195-7199	Miscellaneous furniture and fixtures.....	325
7200-7219	Household furnishings.....	150
7220-7229	Floor coverings.....	240
7230-7239	Draperies, awnings, and shades.....	120
7240-7249	Household and commercial containers.....	120
7250-7259	Miscellaneous household and commercial appliances.....	130
7300-7329	Food, cooking, baking, and warming kitchen equipment.....	140
7330-7339	Kitchen handtools and utensils.....	120
7400-7429	Office machines and parts.....	120
7430-7459	Visible record equipment.....	120
7460-7499	Miscellaneous office machines.....	130
7500-7519	Office supplies.....	120
7520-7529	Office devices and accessories.....	120
7530-7539	Stationery and record forms.....	102
7540-7579	Standard forms.....	120
7600-7629	Books, papers, etc.....	130
7700-7799	Musical instruments, phonographs, and radios.....	120
7800-7899	Recreational and athletic equipment.....	150
7900-7999	Cleaning equipment and supplies.....	150
8000-8019	Paints, varnishes, enamels, etc.....	130
8020-8029	Brushes, paint and ritist.....	150
8030-8099	Sealers and adhesives.....	150
8100-8299	Containers and packaging.....	150
8300-8399	Textiles, leathers, and furs.....	120
8400-8499	Clothing and individual equipment.....	120
8500-8519	Perfumes and toiletries.....	120
8520-8539	Toilet soap, personal.....	120
8540-8599	Toiletary paper products.....	120
8600-8699	Agricultural supplies and live animals.....	150
8700-8799	Subsistence.....	120
8800-8899	Nonmetallic fabricated materials.....	120
8900-8999	Nonmetallic crude materials, metals, and ores.....	120
9000-9099	Miscellaneous.....	120

<sup>1</sup> Deduct 30 days from time shown when total requirements can be made under small purchase procedures.

<sup>2</sup> For vehicles in Federal Supply Classes 2310, 2320, and 2330 included in GSA's consolidated volume and monthly purchase programs, see § 101-26.501-4 for procurement and delivery times schedules. For other vehicles in these classes and those in Federal Supply Class 2340, the leadtime shown is for standard vehicles without special features or attachments.

<sup>3</sup> The following classes will be considered on a case-by-case basis because of special features that may be required. The leadtime shown is for routine requirements:

Class	Class title
3305	Earth moving and excavating equipment.
3310	Cranes and craneshoes.
3335	Miscellaneous construction equipment.

<sup>4</sup> All classes in FSC Group E3, Communication equipment, will be considered on a case-by-case basis because of special features that may be required. The leadtime shown is for routine requirements.

(Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c))

**Effective date.** This regulation is effective on October 18, 1974.

**Dated:** October 4, 1974.

**ARTHUR F. SAMPSON,**  
*Administrator of General Services.*

[FR Doc. 74-24036 Filed 10-17-74; 8:45 am]

# proposed rules

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF DEFENSE

Corps of Engineers

[ 36 CFR Part 327 ]

[ ER 1130-2-411 ]

### CIVIL WORKS WATER RESOURCE PROJECTS

#### Designation of Seaplane Landing Areas

Notice is hereby given that the regulations set forth in tentative form below are proposed by the Secretary of the Army (acting through the Chief of Engineers). The proposed regulation prescribes the policy practice and procedure to be followed for the designation of seaplane landing areas in lakes under the jurisdiction of the Corps of Engineers at Civil Works projects.

Prior to the promulgation of these regulations, consideration will be given to any comments, suggestions or objections thereto which are submitted in writing to: Chief of Engineers, ATTN: (DAEN-CWO-R), Department of the Army, Washington, D.C. 20314, on or before December 2, 1974.

Dated: October 11, 1974.

RUSSELL J. LAMP,  
Colonel, Corps of Engineers  
Executive.

#### PROJECT OPERATION

##### DESIGNATION OF SEAPLANE LANDING AREAS AT CIVIL WORKS PROJECTS

1. *Purpose.* The purpose of this regulation is to provide uniform policies and criteria for the designation of seaplane landing areas in lakes under the jurisdiction of the Corps of Engineers at Civil Works projects.

2. *Applicability.* This regulation is applicable to all Divisions and Districts with Civil Works responsibilities.

3. *References.* a. Title 36 CFR Part 327, rules and regulations Governing Public Use of Water Resource Development Projects Administered by the Chief of Engineers (38 FR 7552, March 23, 1973).

b. ER 1105-2-507.

c. ER 1130-2-400.

d. ER 1145-2-301.

e. ER 1145-2-303.

f. ER 1165-2-400.

g. ER 405-2-800 Series.

4. *Policy.* a. The objective of all Corps of Engineers resources management activity is the continued enjoyment and maximum sustained use by the public of the lands, waters, forests, and associated recreational resources, consistent with their carrying capacity and their aesthetic and biological values. Such man-

agement includes efforts to preserve and enhance the environmental amenities that are the source and the cause of the recreational values associated with justification of the Federal interest in the project, and to allow such other new and innovative uses of the project that are not detrimental thereto.

b. Seaplane landing areas may be designated by District Engineers on Corps of Engineers lakes under Title 36, provided such use can be accommodated with maximum safety for and minimum interference with recreation activity.

c. The implementation of this policy requires the utilization of sound management practices and plans for all project waters; including enhancement of environmental quality, prevention of loss or damage to project resources, protection of recreational public from accidental injury, and preservation and enhancement of opportunities for water-oriented outdoor recreation.

d. The implementation of this policy requires that the primary objective be the best use of project resources in the public interest, and that public be fully involved in the process of deciding or/and designating seaplane landing areas on civil works lakes.

5. *Guidelines and criteria for evaluating project lands for seaplane landing areas.* a. Designated landing areas must provide for adequate water surface unimpeded by rocks or shallows and other hazards. Such consideration shall take water level fluctuation into account so that the designated area can be utilized throughout the year, or a designated portion thereof.

b. The proposed landing area shall be considered in relation to the required air space approaches and shall be in full accord with the Federal Aviation Administration and State Aeronautics Board Regulations.

c. Proposed landing areas shall be considered in relation to Rules and Regulations promulgated by U.S. Coast Guard and State Boating Law Administrators.

d. Landing areas shall not be designated within marked navigation channels.

e. Safety of the aircraft and surface craft shall be given maximum consideration and areas will not be designated which have highly concentrated uses.

f. Designation of landing areas shall include consideration of comments of Federal, State and local agencies responsible for air, water and noise pollution.

g. Watercraft will not be excluded from designated landing areas, but appropriate warning signs must be employed to warn boaters of hazards.

h. Supporting on-shore facilities for seaplane operations, when located on

Federal lands, will be subject to appropriate real estate actions.

i. Use of designated seaplane landing areas will be limited to the hours between sunrise and sunset.

j. No commercial uses of seaplanes operating from designated landing areas will be allowed without a special use permit.

6. *Procedure.* a. Applications for seaplane landing areas will be made to the District Engineer. The application and appropriate comments will be forwarded to the Federal Aviation Administration for study and advice, as to effects of the proposal on use of airspace. The Coast Guard, State Boating Administrator and State Aeronautical Agency will also be requested to provide comment and advice regarding the application prior to approval of the landing area.

b. District Engineers will insure that the public has ample opportunity to comment regarding the designation of specific landing areas. Public notices will be issued by the District Engineer, allowing a minimum of 30 days for receipt of public comment. Maximum use will be made of news releases, public notices, congressional liaison and public meetings to encourage full public participation.

c. Processing of applications for landing areas will be in accordance with this regulation rather than in accordance with ER 1145-2-301.

d. Applications for structures other than floating structures placed in navigable waters of the United States which are associated with seaplane landing areas will be processed in accordance with ER 1145-2-303.

e. If the seaplane landing area will serve air carriers licensed by the Civil Aeronautics Board, the applicant must receive an airport operating certificate from the FAA. That certificate reflects determination and conditions relating to the installation, operation, and maintenance of adequate air navigation facilities and safety equipment. Accordingly, the District Engineer may, in evaluating the general public interest, consider such matters to have been primarily evaluated by the FAA.

f. Where the seaplane landings require an interest in lands or water areas in support of such landings, i.e., piers, rights of way, such interest will be granted to the applicant by the issuance of an appropriate real estate grant under procedures authorized in the ER 405-1-800 series.

g. The boating public will be kept advised of designated seaplane landing areas which should be indicated on the map of the project folders.

[FR Doc.74-24326 Filed 10-17-74;8:46 am]

## DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[25 CFR Part 221]

AHTANUM INDIAN IRRIGATION PROJECT  
Irrigation Operation and Maintenance  
Charges

These proposed regulations are being considered for issuance under the authority delegated to the Commissioner of Indian Affairs by the Secretary of the Interior in 230 DM 1 and redelegated by the Commissioner to the Area Director in 10 BIAM 3.

Notice is hereby given that it is proposed to modify § 221.1 of Part 221, Subchapter T, Chapter I, of Title 25 of the Code of Federal Regulations by changing the rate for annual operation and maintenance assessments on the Ahtanum Indian Irrigation Project for Calendar Year 1975 and subsequent years. This modification is proposed pursuant to the authority contained in the Acts of August 1, 1914 (38 Stat. 583) and March 7, 1928 (45 Stat. 210).

The purpose of this modification is to increase the assessment rate to more accurately reflect the actual operation and maintenance costs based on the previous year's operating experience and the anticipated program of work.

The public is welcome to participate in the rulemaking process of the Department of the Interior. Accordingly, interested persons may submit written comments, views, or arguments with respect to the proposed rates to the Area Director, Portland Area Office, Bureau of Indian Affairs, Post Office Box 3785, Portland, Oregon 97208, on or before November 18, 1974.

Section 221.1 of Chapter I, Title 25 of the Code of Federal Regulations is revised to read as follows:

## § 221.1 Charges.

Pursuant to the provisions of the Acts of August 1, 1914, and March 7, 1928 (38 Stat. 583 and 45 Stat. 210; 25 U.S.C. 385, 387), the operation and maintenance charges on lands of the Ahtanum Indian Irrigation Project, Yakima Indian Reservation, Washington, for the Calendar Year 1975 and subsequent years until further notice, are hereby fixed at \$4 per acre per annum for each irrigable acre of land to which water can be delivered from the project works.

FRANCIS E. BRISCOE,  
Area Director.

OCTOBER 11, 1974.

[FR Doc.74-24283 Filed 10-17-74;8:45 am]

[25 CFR Part 221]

TOPPENISH-SIMCOE INDIAN IRRIGATION  
PROJECTIrrigation Operation and Maintenance  
Charges

These proposed regulations are being considered for issuance under the authority delegated to the Commissioner of Indian Affairs by the Secretary of the

Interior in 230 DM 1 and redelegated by the Commissioner to the Area Director in 10 BIAM 3.

Notice is hereby given that it is proposed to modify § 221.73 of Part 221, Subchapter T, Chapter I, of Title 25 of the Code of Federal Regulations by changing the basic rate for annual operation and maintenance assessments on the Toppenish-Simcoe Indian Irrigation Project for Calendar Year 1975 and subsequent years. This modification is proposed pursuant to the authority contained in the Acts of August 1, 1914 (38 Stat. 583) and March 7, 1928 (45 Stat. 210).

The purpose of this modification is to increase the assessment rate to more accurately reflect the actual operation and maintenance costs based on the previous year's operating experience and the anticipated program of work.

The public is welcome to participate in the rulemaking process of the Department of the Interior. Accordingly, interested persons may submit written comments, views or arguments with respect to the proposed rates to the Area Director, Portland Area Office, Bureau of Indian Affairs, Post Office Box 3785, Portland, Oregon 97208, on or before November 18, 1974.

Section 221.73 of Chapter I, Title 25 of the Code of Federal Regulations is revised to read as follows:

## § 221.73 Charges.

Pursuant to the provisions of the Acts of August 1, 1914, and March 7, 1928 (38 Stat. 583 and 45 Stat. 210; 25 U.S.C. 385, 387), the operation and maintenance charges for the lands under the Toppenish-Simcoe Irrigation Project, Yakima Indian Reservation, Washington, for the Calendar Year 1975 and subsequent years until further notice, are hereby fixed as follows:

All lands for which application for water is made and approved by Project Engineer, per acre..... \$4.35

FRANCIS E. BRISCOE,  
Area Director.

OCTOBER 11, 1974.

[FR Doc.74-24283 Filed 10-17-74;8:45 am]

[25 CFR Part 221]

WAPATO INDIAN IRRIGATION PROJECT  
Irrigation Operation and Maintenance  
Charges

These proposed regulations are being considered for issuance under the authority delegated to the Commissioner of Indian Affairs by the Secretary of the Interior in 230 DM 1 and redelegated by the Commissioner to the Area Director in 10 BIAM 3.

Notice is hereby given that it is proposed to modify § 221.86 of Part 221, Subchapter T, Chapter I, of Title 25 of the Code of Federal Regulations by changing the basic rate for annual operation and maintenance assessments on the Wapato Indian Irrigation Project for Calendar Year 1975 and subsequent

years. This modification is proposed pursuant to the authority contained in the Acts of August 1, 1914 (38 Stat. 583) and March 7, 1928 (45 Stat. 210).

The purpose of this modification is to increase the assessment rate to more accurately reflect the actual operation and maintenance costs based on the previous year's operating experience and the anticipated program of work.

The public is welcome to participate in the rule making process of the Department of the Interior. Accordingly, interested persons may submit written comments, views, or arguments with respect to the proposed rates to the Area Director, Portland Area Office, Bureau of Indian Affairs, Post Office Box 3785, Portland, Oregon 97208, on or before November 18, 1974.

Section 221.86 of Chapter I, Title 25 of the Code of Federal Regulations is revised to read as follows:

## § 221.86 Charges.

The operation and maintenance charges on assessable lands under the Wapato Indian Irrigation Project, Yakima Indian Reservation, Washington, are hereby fixed as follows:

(a) Pursuant to the provisions of the Acts of August 1, 1914, and March 7, 1928 (38 Stat. 583, 45 Stat. 210; 25 U.S.C. 385, 387), the basic operation and maintenance assessment rates for the Calendar Year 1975 and subsequent years until further notice are:

- |   |         |
|---|---------|
| (1) Minimum charges for all tracts in noncontiguous single ownership.....   | \$11.80 |
| (2) Flat rate upon all farm units or tracts for each assessable acre except Additional Works lands.....   | \$11.80 |
| (3) Storage operation and maintenance. For all lands with a storage water right, known as "B" lands, in addition to other charges per acre..... | \$ .60  |
| (4) Flat rate upon all farm units or tracts for each assessable acre of Additional Works lands.....   | \$12.30 |

(b) Pursuant to the provisions of the Act of September 26, 1961 (75 Stat. 680), there shall be assessed and collected from all lands except Additional Works lands, beginning with the Calendar Year 1967 and until further notice but not to exceed a period of 10 years, an annual per acre charge of \$0.20 to defray the cost of replacing a wooden pipeline.

FRANCIS E. BRISCOE,  
Area Director.

OCTOBER 11, 1974.

[FR Doc.74-24281 Filed 10-17-74;8:45 am]

Fish and Wildlife Service

[50 CFR Part 21]

CAPTIVE-REARED MIGRATORY  
WATERFOWL

## Permanent Marking for Identification

The Fish and Wildlife Service proposes to change regulations concerning the permanent marking for identification of captive-reared migratory waterfowl. As

defined in Title 50, Code of Federal Regulations, Part 10, promulgated under the authority of the Migratory Bird Treaty Act, 16 U.S.C. 703-711, migratory birds, which includes waterfowl, means all birds, whether or not raised in captivity, included in the terms of conventions between the United States and any foreign country for the protection of migratory birds. Therefore, these proposed regulations are applicable to all species of waterfowl included in the reference list of migratory birds contained in § 10.13, Title 50, Code of Federal Regulations, whether or not the birds are regarded as domesticated or as wild birds reared in captivity.

#### BACKGROUND

Migratory waterfowl are among those species of migratory birds protected by the Migratory Bird Treaty Act, as amended (16 U.S.C. 703-711), hereinafter referred to as the Act. At the time of its passage many semi-domesticated flocks of waterfowl were in the possession of private individuals. Recognizing the potential of these birds to augment the Nation's food supply, Congress included the following language in the Act: "Nothing in this Act shall be construed to prevent the breeding of migratory game birds on farms and preserves and the sale of birds so bred under proper regulations for the purpose of increasing the food supply" (16 U.S.C. 711). The Act also prohibits the taking of migratory birds from the wild with the intent of selling or offering them for sale. Thus, the Act allows captive propagation of migratory game birds under proper regulations for the purpose of increasing the food supply, but prohibits the commercialization of migratory game birds taken from the wild.

A permit system, encompassing all migratory waterfowl in captivity, represented the earliest attempt to administer the provisions of the new Act. However, as early as 1920 there were indications that little was being accomplished in properly regulating these birds. Mallard ducks, in particular, were responsive to poultry husbandry practices and many birds in private ownership were known to have resulted from successive breedings in captivity extending back many generations. In order to eliminate a permit requirement which had little more than nuisance value, it was administratively determined in 1921 that mallard ducks more than two generations removed from the wild could be possessed, used for food purposes, and sold without permit. In 1947, this policy was extended to black ducks. However, mallard and black ducks not more than two generations removed from the wild could only be propagated, sold or exchanged under authorization of a Federal propagating and sale permit, and had to be identified with a "V" notch in the web of one foot prior to reaching the age of 4 weeks.

This policy placed the predecessor agencies of the Fish and Wildlife Service in the untenable position of ineffectively carrying out enforcement respon-

sibilities due to the inability to distinguish to the satisfaction of the courts, the difference between mallard and black ducks two or more generations removed from the wild and those actually considered wild or less than two generations removed from the wild. This situation was compounded as the fighting of domestic mallards and black ducks for tower shooting became prevalent due to the decrease of wild populations and locations to hunt. Some of these private hunting preserves and commercial shooting grounds were established in locations and under conditions which resulted in the intermingling of migrating wild ducks with the stocks of captive-reared birds. In other instances, shooting areas were established within or in close proximity to natural waterfowl habitat where the eggs and young of wild birds were being collected with the eggs and offspring of stocks of mallards and black ducks maintained in captivity for shooting purposes. During the hunting seasons the intermingling of wild birds with the captive flocks, coupled with the inability to distinguish between birds of the two classes when in flight, frequently resulted in the taking of wild birds in excess of the bag and possession limits, in violation of the regulations prohibiting the use of live decoys and the taking of wild birds which are lured or attracted to the hunter by artificially placed food—limitations imposed by regulations issued under the authority of the Act to prevent depletion of the stocks of wild birds. In response to mounting public concern over managed shooting areas, the U.S. Fish and Wildlife Service in 1956 reinstated permit procedures which included regulation of the taking of migratory waterfowl on shooting preserves and required tagging or other appropriate methods to identify birds reared in captivity. Although the new system did not completely eliminate problems with shooting preserves, a Federal court decision ("Koop v. U.S.," 296 F. 2d 53 (8th Cir. 1961)) prompted a correction of these problems. This decision held that ducks released from captivity, even if they can be identified or distinguished from other ducks, are wild ducks within the meaning of the law and the regulations, and accordingly, can only be taken in compliance with the regulations governing the taking of wild migratory waterfowl. The impact of this decision upon shooting preserves utilizing migratory waterfowl was obvious. In order to allow continued operation of waterfowl shooting preserves, regulations were promulgated which authorize the shooting of captive-reared and properly marked mallard ducks within the confines of any premises operated as a shooting preserve under State license, permit, or authorization. Under the authority of 50 CFR 21.13, the taking of captive-reared and properly marked mallards is allowed as long as the birds are permanently identified and their shooting is not associated with wild ducks.

As a result of the court decision and the regulations authorizing the taking of

captive-reared and properly marked mallard ducks on shooting preserves, new impetus was provided for researching methods of identifying captive-reared waterfowl. Research begun by the Service as early as 1953 in cooperation with State and private cooperators was intensified. The scope of this research included all promising methods of permanently identifying captive-reared birds, which included tattooing of foot webbing, bills and wings; notching of foot webbing; hole punching in the foot webbing; pinioning; leg banding; bill marking; and clipping of the hind toes. Semi-permanent methods including feather marking and dyeing and dyeing of the feet were also considered. Of all the methods considered, clipping of the hind toe of a foot proved to be the best, single method which had been investigated up to that time.

In 1967 Federal regulations were modified to require the clipping of the right hind toe of migratory waterfowl possessed in captivity with exceptions for captive adult geese, swans and brant which had previously been marked by a "V" notch in the web of one foot, and adult birds held in captivity at public institutions. Concurrently with the adoption of the new regulations, permits were no longer required for individuals to possess lawfully acquired, properly identified, migratory waterfowl for their own use.

Federal regulations concerning the identification of captive-reared waterfowl were further modified in 1972. Provision was made for the issuance of a special aviculturist permit which authorizes a permittee to acquire, propagate, possess, exhibit, and dispose of by exchange, sale or gift to another person who has been issued a special aviculturist permit, waterfowl not marked by toe-clipping, and such birds are exempted from the toe-clipping requirements otherwise necessary for captive-reared birds. This change was made in response to a number of requests from bona fide aviculturists who contended that captive-reared waterfowl permanently identified by removal of the right hind toe were unsuitable for show purposes because of this marking technique.

#### CURRENT REGULATIONS

Current regulations governing the identification of captive-reared migratory birds were republished in the FEDERAL REGISTER on January 4, 1974 (39 FR 1178). These regulations are set forth below for reference purposes:

##### § 21.13 Permit exceptions for captive-reared mallard ducks.

Captive-reared and properly marked mallard ducks, alive or dead, or their eggs may be acquired, possessed, sold, traded, donated, transported, exported (but not imported), and disposed of by any person without a permit, subject to the following conditions, restrictions, and requirements:

(a) Nothing in this section shall be construed to permit the taking of live

mallard ducks or their eggs from the wild.

(b) All mallard ducks possessed in captivity, without a permit, shall have been physically marked by removal of the hind toe from the right foot prior to 4 weeks of age and all such ducks hatched, raised, and retained in captivity thereafter shall be so marked prior to reaching 4 weeks of age.

(c) When so marked, such live birds may be disposed of to, or acquired from, any person and possessed and transported in any number at any time or place: *Provided*, That all such birds shall be physically marked prior to sale or disposal regardless of whether or not they have attained 4 weeks of age.

(d) When so marked, such live birds may be killed, in any number, at any time or place, by any means except shooting. Such birds may be killed by shooting only in accordance with all applicable hunting regulations governing the taking of mallard ducks from the wild: *Provided*, That such birds may be killed by shooting, in any number, at any time, within the confines of any premises operated as a shooting preserve under State license, permit, or authorization; or they may be shot, in any number, at any time or place, by any person for bona fide dog training or field trial purposes: *Provided further*, That the provisions of the hunting regulations (Part 20 of this subchapter) and the Migratory Bird Hunting Stamp Act (duck stamp requirement) shall not apply to shooting preserve operations, as provided for in this paragraph, or to bona fide dog training or field trial operations.

(e) At all times during possession, transportation, and storage until the raw carcasses of such birds are finally processed immediately prior to cooking, smoking, or canning, the marked foot must remain attached to each carcass: *Provided*, That persons, who operate game farms or shooting preserves under a State license, permit, or authorization for such activities, may remove the marked foot when either the number of his State license, permit, or authorization has first been legibly stamped in ink on the back of each carcass or on the container in which each carcass is maintained, or each carcass is identified by a State band on leg or wing pursuant to requirements of his State license, permit, or authorization. When properly marked, such carcasses may be disposed of to, or acquired from, any person and possessed and transported in any number at any time or place.

**§ 21.14 Permit exceptions for captive-reared migratory waterfowl other than mallard ducks.**

Any person may, without a permit, lawfully acquire captive-reared and properly marked migratory waterfowl of all species other than mallard ducks, alive or dead, or their eggs, and possess and transport such birds or eggs and

any progeny or eggs therefrom solely for his own use subject to the following conditions and restrictions:

(a) Such birds, alive or dead, or their eggs may be lawfully acquired only from holders of valid waterfowl sale and disposal permits except that properly marked carcasses of such birds may also be lawfully acquired as provided under paragraph (c) of this section.

(b) All progeny of such birds or eggs hatched, raised, and retained in captivity must be physically marked by removal of the hind toe from the right foot prior to reaching 4 weeks of age.

(c) No such birds or eggs or any progeny or eggs thereof may be disposed of by any means, alive or dead, to any other person unless a waterfowl sale and disposal permit has first been secured authorizing such disposal: *Provided*, That bona fide clubs, hotels, restaurants, boarding houses and dealers in meat and game may serve or sell to their customers the carcasses of any such birds which they have acquired from the holder of a valid waterfowl sale and disposal permit.

(d) Lawfully possessed and properly marked birds may be killed, in any number, at any time or place, by any means except shooting. Such birds may be killed by shooting only in accordance with all applicable hunting regulations governing the taking of like species from the wild. (See Part 20 of this subchapter.)

(e) At all times during possession, transportation, and storage until the raw carcasses of such birds are finally processed immediately prior to cooking, smoking, or canning, the marked foot must remain attached to each carcass unless such carcasses were otherwise properly marked and the foot removed prior to acquisition.

(f) When any such birds, alive or dead, or their eggs are acquired from a waterfowl sale and disposal permittee, the permittee shall furnish a copy of form 3-186, notice of waterfowl sale or transfer, to be retained on file by the buyer during his possession of such birds or eggs or progeny or eggs thereof.

**§ 21.25 Waterfowl sale and disposal permits.**

(a) *Permit requirement.* A waterfowl sale and disposal permit is required before any person may lawfully sell, trade, donate, or otherwise dispose of, to another person, any species, of captive-reared and properly marked migratory waterfowl or their eggs, except that such a permit is not required for such sales or disposals of captive-reared and properly marked mallard ducks or their eggs.

(b) *Application procedures.* Applications for waterfowl sale and disposal permits shall be submitted to the appropriate Special Agent in Charge (see: § 13.11(b) of this subchapter). Each such application must contain the general information and certification required in § 13.12(a) of this subchapter, plus the following additional information:

(1) A description of the area where waterfowl are to be kept;

(2) Species and numbers of waterfowl now in possession and a statement showing from whom these were obtained;

(3) A statement as to whether or not all such waterfowl are marked as required by the provisions of this Part 21; and

(4) If a State permit is required by State law, a statement as to whether or not the applicant possesses such State permit, giving its number and expiration date.

(c) *Additional permit conditions.* In addition to the general conditions set forth in Part 13 of this Subchapter B, waterfowl sale and disposal permits shall be subject to the following conditions:

(1) Permittees may not take migratory waterfowl or their eggs from the wild, and may not acquire such birds or their eggs from any person not authorized by a valid permit issued pursuant to this part to dispose of such birds or their eggs.

(2) All live migratory waterfowl possessed in captivity under authority of a valid waterfowl sale and disposal permits shall have been, prior to 4 weeks of age, physically marked by removal of the hind toe from the right foot. All offspring of such birds hatched, raised and retained in captivity shall be so marked prior to attaining 4 weeks of age. The preceding does not apply to captive adult geese, swans, and brant which were marked previous to March 1, 1967, by a "V" notch in the web of one foot, nor to such birds held in captivity at public zoological parks, and public scientific or educational institutions.

(3) Such properly marked birds may be killed, in any number, at any time or place, by any means except shooting. Such birds may be killed by shooting only in accordance with all the applicable hunting regulations governing the taking of like species from the wild.

(4) At all times during possession, transportation, and storage until the raw carcasses of such birds are finally processed immediately prior to cooking, smoking, or canning, the marked foot must remain attached to each carcass: *Provided*, That permittees who are also authorized to sell game under a State license, permit, or authorization may remove the marked foot from the raw carcasses if the number of his State license, permit, or authorization has first been legibly stamped in ink on the back of each carcass or on the wrapping or container in which each carcass is maintained, or each carcass is identified by a State band on leg or wing pursuant to requirements of his State license, permit, or authorization.

(5) Such properly marked birds, alive or dead, or their eggs may be disposed of in any number, at any time or place, to any person: *Provided*, That all such birds shall be physically marked prior to sale or disposal regardless of whether or not they have attained 4 weeks of age: *And provided further*, That on each

date that any such birds or their eggs are transferred to another person, the permittee must complete a form 3-186, Notice of Waterfowl Sale or Transfer. (Bureau will provide supplies of form.) The permittee will furnish the original of completed form 3-186 to the person acquiring the birds or eggs; retain one copy in his files as a record of his operations; and, on or before the last day of each month, mail three copies of each form completed during that month to the office of the Bureau of Sport Fisheries and Wildlife which issued his permit.

(d) *Tenure of permits.* The tenure of waterfowl sale and disposal permits or renewals thereof shall be from date of issue through the 31st day of December of the second full calendar year following the year of issue.

#### § 21.26 Special aviculturist permit.

(a) *Permit requirement.* A special aviculturist permit is required before any person may acquire, propagate, possess, exhibit, or dispose of by exchange, sale, or gift to another person captive-reared migratory waterfowl not physically marked by removal of the hind toe from the right foot.

(b) *Application procedures.* Applications for special aviculturist permits shall be submitted to the appropriate Special Agent in Charge (see: § 13.11(b) of this subchapter). Each such application must contain the general information and certification required by § 13.12(a) of this subchapter plus the following information:

- (1) A description of the area where such waterfowl are to be kept;
- (2) Statement of number and species of non-toe-clipped waterfowl permittee now possesses, and the number of each species he requests to be authorized to possess;
- (3) Statement of how, or when and from whom any non-marked waterfowl presently in possession were acquired;
- (4) Statement of justification and need for such permit; and
- (5) If a State permit is required by State law, a statement as to whether or not the applicant possesses such State permit, giving its number and expiration date.

(c) *Additional permit conditions.* In addition to the general conditions set forth in Part 13 of this Subchapter B, special aviculturist permits shall be subject to the following conditions:

- (1) Permittees may not take migratory waterfowl or their eggs from the wild.
- (2) Permittees may not dispose of migratory waterfowl which are not marked by physical removal of the hind toe from the right foot prior to 4 weeks of age to any person who does not hold a valid special aviculturist permit, nor acquire such unmarked waterfowl from any person who is not the holder of a valid special aviculturist permit.
- (3) On each date that any such unmarked birds or their eggs are transferred to another special aviculturist

permittee, the permittee transferring the birds or their eggs must complete a form 3-186, Notice of Waterfowl Sale or Transfer. The permittee will furnish the original of completed form 3-186 to the permittee acquiring the birds or eggs; retain one copy in his files as a record of his operations; and, on or before the last day of each month, mail three copies of each form completed during that month to the issuing official. The permittee shall clearly indicate on such form 3-186 that the waterfowl sold or transferred were "unmarked" and shall place his special aviculturist permit number on the form, as well as the permit number of the transferee, and shall not report such sales under authority of any other Federal permit. The Bureau will provide form 3-186 to permittees upon request.

(4) Permittees shall keep records in conformance with the provisions of § 13.46 of this subchapter. Such records shall be kept separately from records of activities under any other Federal permit held by the permittee.

(5) Within 30 days following December 31 of each calendar year, permittee must file a report, negative or otherwise, on a form furnished for that purpose. This form will require each permittee to record information concerning his transactions during the year, and will include but may be limited to, the number of each species of non-toe-clipped waterfowl and waterfowl eggs on hand at the beginning of the period covered by the report, the name, address, and aviculturist permit number of each permittee from whom he acquired and to whom he transferred any non-toe-clipped waterfowl or waterfowl eggs, and the number of each species of non-toe-clipped waterfowl and waterfowl eggs left on hand as of December 31 of the year covered in the report.

(d) *Tenure of permit.* The tenure of special aviculturist permits shall be from date of issue through the 31st day of December of the second full calendar year following the year of issues unless a different period of time is prescribed in the permit.

#### TECHNIQUES OF MARKING

The Director is interested in promulgating regulations which will enable effective administration of the Act in order to provide proper protection to migratory waterfowl resources while permitting lawful utilization. To accomplish this objective some means of permanently identifying waterfowl reared in captivity is viewed as necessary. The Director believes this objective is compatible with the desires of hobbyists, aviculturists, and of the game bird breeder industry to utilize the captive-reared waterfowl resource without burdensome permit restrictions. Toward this end, the following techniques appear to be satisfactory to those utilizing the captive-reared waterfowl resource and would enable the Service to effectively administer the Act by proving to the satisfaction of the courts the difference between captive-reared waterfowl and wild migratory waterfowl.

Removal of the right hind toe, the present legal method of marking, is generally accepted by the game bird breeder industry, hobbyists and a few aviculturists. It is especially desirable to those who must identify economically, large numbers of birds and to hobbyists who want a simple, efficient method that is easy to accomplish. From the standpoint of some aviculturists, it is unacceptable for presumed sanitary, humane and aesthetic reasons. This method is most appropriate for mallard shooting preserve operators, hobbyists who do not want to invest in elaborate marking equipment, and aviculturists who do not restrict the flight of their birds.

Pinioning, the process whereby the terminal section of one wing is amputated, thus rendering the bird permanently flightless, is a method of marking accepted by aviculturists and hobbyists who desire to restrict the movement of birds. When performed correctly, this operation is said to cause a minimum loss of blood with a low incidence of infection. The method is unacceptable to game bird breeders who provide birds for shooting preserves and hobbyists who rear birds for release to the wild. From the standpoint of administration of the Act, it is an acceptable technique.

Pinioning should not be confused with tenotomy (tendonizing), an operation which involves severing the main wing tendon to prevent flight. Tenotomy is not extensively employed as the operation is not permanent unless burning through of the skin and tendon with an electric burning needle is done in a precise manner. When the operation is not entirely successful, the bird may retain some flight capability. From the viewpoint of administration of the Act, tenotomy is therefore not an acceptable method for identification since the operation may leave little or no mark and the bird may still fly.

Banding of the metatarsus of waterfowl with a seamless metal band is perhaps the most humane method of marking for identification, and is one of the most acceptable for administration of the Act. It lacks in efficiency for application where large numbers of mallards, for example, are marked, and, therefore, is not economical. This technique involves the placing of a seamless metal band large enough to accommodate the birds matured metatarsus, over the foot when the bird is only a few days of age. It must be accomplished at precisely the right stage of development—if too early, the band is lost and if too late the band will not fit over the foot. From this standpoint, i.e., the time required to band and follow-up action necessary to ascertain the band is retained, it is an inefficient technique, and is costly to execute, especially when large numbers of mallards are raised for food or sport purposes.

Some aviculturists now band all birds in this fashion as a matter of practice, and if seamless bands were readily available would undoubtedly utilize the technique. Other aviculturists view banding

of the metatarsus as hazardous since birds may hang the bands on the inside of cages while diving and subsequently drown. Some individuals also believe banding causes serious abrasions on the metatarsus and, consequently, do not band birds. Some hobbyists would apparently utilize the technique due to its humane application and simplicity. Game bird breeders would probably not accept it due to the inefficient application and cost.

Tattooing of characters on the foot web is a technique of identifying birds which is utilized by some aviculturists. While it is an acceptable technique from the viewpoint of administration of the Act if the characters are readily distinguishable, it has certain notable disadvantages. Foremost among these is that specialized equipment is required to mark the birds unless the person employing the technique is knowledgeable and skilled in the tattooing art. Most hobbyists could not readily utilize this method. Game bird breeders probably would not accept the method since it would be inefficient and costly to perform. Last of the notable disadvantages is that the technique requires maturation of the bird beyond the present legal limit of 4 weeks. While advancement of the age limit for required marking is not particularly desirable, it is conceded that the time limit must be advanced if the method is to be employed. Accordingly, 2 additional weeks are proposed to be added to the present time limit for marking of birds in order to make this alternative method practicable.

#### SUMMARY

Conclusions reached by the Director, using the parameter of effective administration of the Act, indicate certain alternative methods of identifying captive-reared waterfowl should be permitted. While the present legal method is undoubtedly the most efficient and economical for most owners of waterfowl and presents a simplistic approach for achieving the objectives of the Act, there are insufficient data to conclude this should be the exclusive method. Other methods of permanently identifying waterfowl are known to exist, but have not been discussed or tentatively accepted as alternatives due to their present limited use or application.

Should alternative methods of identifying captive-reared waterfowl be adopted pursuant to the rulemaking process, the Director proposes to delete the special aviculturist permit authorized in 50 CFR 21.26. Provision was made for this permit in response to bona fide aviculturists who contended toe-clipping of waterfowl rendered birds unfit for show purposes. Adoption of alternative methods of marking would eliminate the reason for this permit, since one or more of the options previously discussed would be acceptable for marking of show birds.

#### SUBMITTAL OF WRITTEN COMMENTS

Interested persons may participate in this rulemaking by submitting written comments, preferably in triplicate, to the

Director (FWS/LE), U.S. Fish and Wildlife Service, P.O. Box 19183, Washington, D.C. 20036. All relevant comments received on or before December 17, 1974, will be considered. The Service will attempt to acknowledge receipt of comments, but substantive responses to individual comments will not be provided. Comments received will be available for public inspection during normal business hours at the Service's office in Suite 600, 1612 K Street, NW., Washington, D.C.

This notice of proposed rulemaking is issued under the authority of the Migratory Bird Treaty Act (16 U.S.C. 704).

Dated: October 15, 1974.

F. V. SCHMIDT,  
Acting Director,  
U.S. Fish and Wildlife Service.

#### PROPOSED

1. It is proposed that §§ 21.13, 21.14, and 21.15 be amended to read:

§ 21.13 Permit exceptions for captive-reared mallard ducks.

Captive-reared and properly marked mallard ducks, alive or dead, or their eggs may be acquired, possessed, sold, traded, donated, transported, exported (but not imported), and disposed of by any person without a permit, subject to the following conditions, restrictions, and requirements:

(a) Nothing in this section shall be construed to permit the taking of live mallard ducks or their eggs from the wild.

(b) All mallard ducks possessed in captivity, without a permit, shall have been physically marked by at least one of the following methods prior to 6 weeks of age and all such ducks hatched, reared, and retained in captivity thereafter shall be so marked prior to reaching 6 weeks of age.

(1) Removal of the hind toe from the right foot.

(2) Pinioning of a wing: *Provided*, That this method shall be the removal of the metacarpal bones of one wing or a portion of the metacarpal bones which renders the bird permanently incapable of flight.

(3) Banding of one metatarsus with a seamless metal band.

(4) Tattooing of a readily discernible number or letter or combination thereof on the web of one foot.

(c) When so marked, such live birds may be disposed of to, or acquired from, any person and possessed and transferred in any number at any time or place: *Provided*, That all such birds shall be physically marked prior to sale or disposal regardless of whether or not they have attained 6 weeks of age.

(d) When so marked, such live birds may be killed, in any number, at any time or place, by any means except shooting. Such birds may be killed by shooting only in accordance with all applicable hunting regulations governing the taking of mallard ducks from the wild: *Provided*, That such birds may be killed by shooting, in any number, at any time,

within the confines of any premises operated as a shooting preserve under State license, permit, or authorization; or they may be shot, in any number, at any time or place, by any person for bona fide dog training or field trial purposes: *Provided further*, That the provisions of the hunting regulations (Part 20 of this subchapter) and the Migratory Bird Hunting Stamp Act (duck stamp requirement) shall not apply to shooting preserve operations, as provided for in this paragraph, or to bona fide dog training or field trial operations.

(e) At all times during possession, transportation, and storage until the raw carcasses of such birds are finally processed immediately prior to cooking, smoking, or canning, the marked foot or wing must remain attached to each carcass: *Provided*, That persons, who operate game farms or shooting preserves under a State license, permit, or authorization for such activities, may remove the marked foot or wing when either the number of his State license, permit, or authorization has first been legibly stamped in ink on the back of each carcass or on the container in which each carcass is maintained, or each carcass is identified by a State band on leg or wing pursuant to requirements of his State license, permit, or authorization. When properly marked, such carcasses may be disposed of to, or acquired from, any person and possessed and transported in any number at any time or place.

§ 21.14 Permit exceptions for captive-reared migratory waterfowl other than mallard ducks.

Any person may, without a permit, lawfully acquire captive-reared and properly marked migratory waterfowl of all species other than mallard ducks, alive or dead, or their eggs, and possess and transport such birds or eggs and any progeny or eggs therefrom solely for his own use subject to the following conditions and restrictions:

(a) Such birds, alive or dead, or their eggs may be lawfully acquired only from holders of valid waterfowl sale and disposal permits except that properly marked carcasses of such birds may also be lawfully acquired as provided under paragraph (c) of this section.

(b) All progeny of such birds or eggs hatched, reared, and retained in captivity must be physically marked as defined in § 21.13(b).

(c) No such birds or eggs or any progeny or eggs thereof may be disposed of by any means, alive or dead, to any other person unless a waterfowl sale and disposal permit has first been secured authorizing such disposal: *Provided*, That bona fide clubs, hotels, restaurants, boarding houses, and dealers in meat and game may serve or sell to their customers the carcass of any such birds which they have acquired from the holder of a valid waterfowl sale and disposal permit.

(d) Lawfully possessed and properly marked birds may be killed, in any number, at any time or place, by any means

except shooting. Such birds may be killed by shooting only in accordance with all applicable hunting regulations governing the taking of like species from the wild. (See Part 20 of this subchapter.)

(e) At all times during possession, transportation, and storage until the raw carcasses of such birds are finally processed immediately prior to cooking, smoking, or canning, the marked foot or wing must remain attached to each carcass, unless such carcasses were marked as provided in § 21.25(c) (4) and the foot or wing removed prior to acquisition.

(f) When any such birds, alive or dead, or their eggs are acquired from a waterfowl sale and disposal permittee, the permittee shall furnish a copy of form 3-186, Notice of Waterfowl Sale or Transfer, indicating all information required by the form and the method or methods by which individual birds are marked as required by § 21.25(c) (2). The buyer shall retain the form 3-186 on file for the duration of his possession of such birds or eggs or progeny or eggs thereof.

#### § 21.25 Waterfowl sale and disposal permits.

(a) *Permit requirement.* A waterfowl sale and disposal permit is required before any person may lawfully sell, trade, donate, or otherwise dispose of, to another person, any species of captive-reared and properly marked migratory waterfowl or their eggs, except that such a permit is not required for such sales or disposals of captive-reared and properly marked mallard ducks or their eggs.

(b) *Application procedures.* Applications for waterfowl sale and disposal permits shall be submitted to the appropriate Special Agent in Charge (see: § 13.11(b) of this subchapter). Each such application must contain the general information and certification required in § 13.12(a) of this subchapter, plus the following additional information:

(1) A description of the area where waterfowl are to be kept;

(2) Species and numbers of waterfowl now in possession and a statement showing from whom these were obtained;

(3) A statement indicating the method by which individual birds are marked as required by the provisions of this Part 21; and

(4) If a State permit is required by State law, a statement as to whether or not the applicant possesses such State permit, giving its number and expiration date.

(c) *Additional permit conditions.* In addition to the general conditions set forth in Part 13 of this Subchapter B, waterfowl sale and disposal permits shall be subject to the following conditions:

(1) Permittees may not take migratory waterfowl or their eggs from the wild, and may not acquire such birds or their eggs from any person not authorized by a valid permit issued pursuant to this part to dispose of such birds or their eggs.

(2) All live migratory waterfowl possessed in captivity under authority of a

valid waterfowl sale and disposal permit shall have been, prior to 6 weeks of age, physically marked as defined in § 21.13 (b). All offspring of such birds hatched, reared, and retained in captivity shall be so marked prior to attaining 6 weeks of age. The preceding does not apply to captive adult geese, swans, and brant which were marked previous to March 1, 1967, by a "V" notch in the web of one foot, nor to such birds held in captivity at public zoological parks, and public scientific or educational institutions.

(3) Such properly marked birds may be killed, in any number, at any time or place, by any means except shooting. Such birds may be killed by shooting only in accordance with all the applicable hunting regulations governing the taking of like species from the wild.

(4) At all times during possession, transportation, and storage until the raw carcasses of such birds are finally processed immediately prior to cooking, smoking, or canning, the marked foot or wing must remain attached to each carcass: *Provided*, That permittees who are also authorized to sell game under a State license, permit or authorization may remove the marked foot or wing from the raw carcasses if the number of his State license, permit, or authorization has first been legibly stamped in ink on the back of each carcass or on the wrapping or container in which each carcass is maintained, or each carcass is identified by a State band on leg or wing pursuant to requirements of his State license, permit, or authorization.

(5) Such properly marked birds, alive or dead, or their eggs may be disposed of in any number, at any time or place, to any person: *Provided*, That all such birds shall be physically marked prior to sale or disposal regardless of whether or not they have attained 6 weeks of age: *And provided further*, That on each date that any such birds or their eggs are transferred to another person, the permittee must complete a form 3-186, Notice of Waterfowl Sale or Transfer, indicating all information required by the form and the method or methods by which individual birds are marked as required by § 21.25(c) (2). (Service will provide supplies of form.) The permittee will furnish the original of completed form 3-186 to the person acquiring the birds or eggs; retain one copy in his files as a record of his operations; and, on or before the last day of each month, mail three copies of each form completed during that month to the office of the Fish and Wildlife Service which issued his permit.

(6) Permittees shall submit an annual report within 10 days following the 31st day of December of each calendar year to the office of the Fish and Wildlife Service which issued the permit. The information provided shall give the total number of waterfowl by species in possession on that date and the method or methods by which individual birds are marked as required by the provisions of this Part 21.

(d) *Tenure of permits.* The tenure of waterfowl sale and disposal permits or renewals thereof shall be from date of issue through the 31st day of December of the second full calendar year following the year of issue.

#### § 21.26 [Deleted]

2. It is proposed that § 21.26 of Subchapter B, Title 50, Code of Federal Regulations, be deleted.

[FR Doc.74-24314 Filed 10-17-74;8:45 am]

## DEPARTMENT OF TRANSPORTATION

Coast Guard

[ 33 CFR Parts 80, 90, 95 ]

[CGD 73-216P]

### PIPELINES

#### Lights To Be Displayed; Correction

In FR Doc. 74-21760 appearing at pages 33709-10 in the issue for Thursday, September 19, 1974, the last paragraph in the preamble should read as follows:

The Coast Guard will hold a public hearing at 9:30 a.m. on October 21, 1974. The hearing will be held in room 8334, United States Coast Guard Headquarters, 400 7th Street SW., Washington, DC 20590. Interested persons are invited to attend the hearing and present oral or written statements on this proposal. The public hearing is informal and intended to obtain views and information from persons affected by the proposals. There will be no cross examination of persons presenting statements.

Dated: October 16, 1974.

R. I. PRICE,  
Rear Admiral, U.S. Coast Guard,  
Chief, Office of Marine Environment and Systems.

[FR Doc.74-24501 Filed 10-17-74;10:15 am]

## Hazardous Materials Regulations Board

[ 49 CFR Parts 172, 173, 174, 177, 178 ]

[Docket No. HM-121; Notice No. 74-12]

### TRANSPORTATION OF HAZARDOUS MATERIALS

#### Use of Certain Packagings

##### Corrections

In FR Doc. 74-23590 appearing at page 36596 in the issue of Friday, October 11, 1974, the following changes should be made:

1. In the first column on page 36597, in the Table of Contents for Part 173, in the third entry, delete the second line.

2. In the third column on page 36599, the second paragraph "23" should be redesignated as paragraph "24" and the amendatory language should read: "24. In § 173.304, the introductory text of paragraph (a) (1) and (a) (2) Table would be revised to read as follows:".

3. In the sixth line of § 173.304(a) (1), before the word "chapter" insert: "178.55, 178.61, 178.65, 178.68 of this sub."

4. In § 173.314(c), in the first line of the Table, after the word "Note," insert "4."

5. On page 36601, in the amendatory language for paragraph 10. and 11., change the words "is amended, added, and is added" to read "would be amended and would be added."

## ACTION

### [45 CFR Part 1208]

#### FOSTER GRANDPARENT PROGRAM

##### Notice of Proposed Rulemaking

Notice is hereby given that the Director of ACTION proposes to amend Chapter XII of Title 45, Code of Federal Regulations to add a new Part 1208. This provides for new Foster Grandparent Program regulations to replace those now appearing in Chapter IX of Title 45, Part 907. Authorized pursuant to section 211 (a) of the Domestic Volunteer Service Act of 1973, Pub. L. 93-113, 87 Stat. 402, the Foster Grandparent Program provides opportunities for low-income persons, age 60 or older, to serve as volunteers to provide supportive services to children having special or exceptional needs.

The present Foster Grandparent Program regulations and the proposed regulations are similar. However, several substantive changes have been made. The most significant changes to the existing regulations are:

(1) In keeping with Pub. L. 93-113, responsibility for the Foster Grandparent Program is with the Director of ACTION. It was formerly with the Secretary, Department of Health, Education, and Welfare.

(2) *Section 1208.2-1—Eligibility and funding.* In exceptional situations, the Director of ACTION may approve assistance for more than 90 percent of developmental and operational costs. One or more conditions must be met: (a) Limited non-federal resources available in the service area; or, (b) an emergency situation exists in the service area, e.g., an officially declared disaster.

(3) *Section 1208.3-2—Volunteer stations.* This section identifies volunteer stations as residential and nonresidential. Examples of new volunteer stations utilizing Foster Grandparents and children include schools, day care, or pre-school establishments, and children living in private residences.

(4) *Section 1208.3-4—Children served.* This modifies somewhat the original one-to-one concept of the Foster Grandparent Program, making possible the serving of more than one child at a time as long as the intent is to maximize the gains to children from a supportive, person-to-person relationship with a mature adult.

(5) *Section 1208.3-5—Memorandum of Understanding.* This is a new paragraph. A jointly development Memorandum of Understanding clarifies working relationships, facilitates communication and promotes cooperation between a sponsor and each volunteer station. The

agreement is jointly signed prior to assignment of foster grandparents.

(6) *Section 1208.3-6—Foster Grandparent Program Advisory Council.* The principal change concerns the membership of the Council. The regulation provides for: (a) Minority group representation; and (b) one-fourth of the members must be or represent low-income people, age 60 or older, and may include foster grandparents.

(7) *Section 1208.4-1—Eligibility.* The most significant change is in the formula for computing a volunteer's eligibility for the program. Pursuant to section 421(4) of Pub. L. 93-113, the formula is the OEO poverty guideline (section 625 of the Economic Opportunity Act) as modified to reflect the higher cost-of-living in the geographic area to be served by the project. The amount which individual states supplement Federal Supplemental Security Income payments is considered by ACTION to reflect the higher cost-of-living in the geographic area to be served by a project. Thus, it is added to the OEO poverty guideline to arrive at the volunteer eligibility level for a particular project.

(8) Paragraph (b) includes a change in the method of determining the stipend paid volunteers. It is presently determined with reference to the availability of program funds and the Federal minimum wage. The use of the Federal minimum wage law as a reference point is no longer appropriate in light of section 418 of Pub. L. 93-113, which makes stipends not subject to Federal minimum wage requirements. However, the stipend will be set at a level that will permit and encourage eligible low-income older persons to serve as volunteers without cost to themselves and will be in keeping with program funding restrictions.

Paragraph (d) requires that grantees have certain kinds of insurance related to volunteers' activities. Besides accident insurance to protect the volunteers, personal liability and excess automobile liability insurance is required to protect volunteers.

Inquiries may be addressed and comments and views concerning the proposed new part may be submitted to ACTION, 806 Connecticut Avenue, NW., Washington, D.C. 20525. Attention: Associate Director for Domestic and Anti-Poverty Operations. All comments received on or before November 18, 1974, will be considered. All comments in response to this proposal will be available for public inspection during normal business hours at the foregoing address.

It is therefore proposed to add a new Part 1208 to Chapter XII of Title 45 of the Code of Federal Regulations as follows:

## CHAPTER XII—ACTION

### PART 1208—FOSTER GRANDPARENT PROGRAM RULES AND REGULATIONS

#### Subpart A—General

- Sec.  
1208.1-1 Introduction.  
1208.1-2 Definitions.

#### Subpart B—Project Sponsors

- Sec.  
1208.2-1 Eligibility and funding.  
1208.2-2 Grant application.  
1208.2-3 State Agency on Aging and CAA participation.  
1208.2-4 Responsibilities.  
1208.2-5 Project staff.  
1208.2-6 Suspension or termination, of a grant and denial of application for refunding.

#### Subpart C—Project Operation

- 1208.3-1 Introduction.  
1208.3-2 Volunteer stations.  
1208.3-3 Activities.  
1208.3-4 Children served.  
1208.3-5 Memorandum of understanding.  
1208.3-6 Advisory Council.

#### Subpart D—Volunteers

- 1208.4-1 Eligibility.  
1208.4-2 Recruitment and instruction.  
1208.4-3 Terms of service.  
1208.4-4 Legal fees.

#### Subpart E—General

- 1208.5-1 Coordination.  
1208.5-2 Grant awards.  
1208.5-3 Grant conditions.  
1208.5-4 Project changes.  
1208.5-5 Special legal limitations.

AUTHORITY: Secs. 211(a), 212, 221, 222, 223, 403(14) and 420 of Pub. L. 93-113, 87 Stat. 402, 403, 404, 407, 414

#### Subpart A—General

##### § 1208.1-1 Introduction.

The purpose of this program is to provide meaningful part-time volunteer opportunities for low-income older persons to render supportive person-to-person services to children having special or exceptional needs in health, education, welfare and related settings.

(a) Section 211(a) of the Domestic Volunteer Service Act of 1973, Pub. L. 93-113, 87 Stat. 402, authorizes the Director of ACTION to make grants or contracts to develop and operate a Foster Grandparent Program.

(b) These regulations relate only to grants. The contract format will not be used in the development and operation of local projects.

##### § 1208.1-2 Definitions.

As used in this part the terms "ACTION" or "ACTION office" include each Regional office. The local program for which a sponsor receives grant assistance will be referred to as a project.

#### Subpart B—Project Sponsors

##### § 1208.2-1 Eligibility and funding.

ACTION shall make grants only to public and nonprofit private agencies and organizations which have authority to accept grants for the purposes of this part and have the capability of administering such a project. Volunteer stations, as defined in § 1208.3-2, shall not be sponsors. These grants can be made to pay up to 90 percent of the costs of development and operation of programs designed to carry out the purpose of this part. In exceptional situations, the Director of ACTION may approve assistance for more than 90 percent of such costs. A project must meet one of the following criteria to be eligible to receive

grant assistance for more than 90 percent of costs:

(1) The project is located in an area where non-federal resources are too limited to provide 10 percent of the total project cost. This may be due to short or long-term conditions of poverty in an area where there is a serious need for the project, or

(2) The project is located in an area where an emergency situation exists, such as a country or state which has been declared a disaster area and there is a serious need for the project.

#### § 1208.2-2 Grant application.

Any eligible agency or organization may file an application for a grant with ACTION. Grant application forms may be obtained from any ACTION office. The grant application is designed to provide ACTION with information needed to evaluate an applicant's capacity to develop and operate a project. The application will include:

(a) General goals for the proposed project, consistent with the purpose of this part.

(b) Specific objectives to be achieved, activities to be undertaken and methods to be followed during the project budget period in support of the stated goals.

(c) A detailed budget and budget item justification.

(d) Duties of projected staff positions and qualifications required for incumbents of the positions.

(e) Ways in which active coordination is to be established with other aging and volunteer related organizations, including the State Agency on Aging, if the State agency is not the sponsor.

(f) Type of membership and functions of a Foster Grandparent Advisory Council.

(g) The proposed service area to be served by the project.

(h) Copies of Memoranda of Understanding with proposed volunteer stations.

(i) Available data on the population, age 60 and over, in the proposed service area.

(j) A description of the special efforts the sponsor will make to recruit and to select qualified individuals from minority groups to serve as Foster Grandparents.

#### § 1208.2-3 State Agency on Aging and Community Action Participation.

Under certain circumstances, State Agencies on Aging under section 304(a) (1) of the Older Americans Act of 1965, as amended (42 U.S.C. 3024(a)(1)) and Community Action Agencies (CAA's) under Title II of the Economic Opportunity Act, as amended, must be offered a reasonable opportunity to apply for a grant or must be consulted in the development of the project.

(a) *State Agencies on aging.* (1) When a project is proposed to be carried out throughout a State or in an area more comprehensive than one community, the appropriate State Agency on Aging must be afforded a reasonable opportunity to

apply for and receive the grant and to administer or supervise the administration of the project. The State Agency on Aging will be considered to have received a reasonable opportunity if it has not submitted a grant application to ACTION within 45 days after receiving notice from ACTION that another organization has applied for a project grant, or if it has waived its opportunity in writing.

(2) ACTION shall notify the applicable State Agency in writing or by telegram that it is considering awarding a grant. This will enable the agency to consider applying for such an award within the 45-day period. The assurances referred to in paragraph (a) (4) of this section will constitute a written waiver.

(3) If both a State Agency on aging and another organization apply for grant assistance when available funds are limited, the decision to award a grant to the other organization must be based on a clear written statement that the application and a review of the prospective sponsor's qualifications indicate it will carry out the project more effectively.

(4) Where the State Agency is not the grantee, applications for projects must contain satisfactory written assurances that the project has been developed, and will, to the extent appropriate, be conducted in consultation with or with the participation of the appropriate State Agency on Aging. A letter in the grant application from the appropriate State Agency on Aging containing the following information constitutes such an assurance: (i) The project has been developed with assistance of the State Agency, and (ii) will be, to the extent appropriate, conducted in consultation with it.

(b) *Community Action Agency.* Where a project is proposed to be undertaken entirely in a community served by a Community Action Agency, the procedure described in paragraph (a) of this section shall be followed, except that requirements relating to the State Agency on Aging shall relate instead to the Community Action Agency.

(c) Except for new grant applicants to which paragraph (a) of this section applies, no new grant awards shall be made unless the State Agency on Aging has been afforded at least 45 days in which to review the application and to make recommendations thereon. The applicable State Agency shall state in writing to ACTION that: (1) It has waived its right to comment on the project, or (2) it supports or cannot recommend the project and its reasons therefor.

#### § 1208.2-4 Responsibilities.

(a) The sponsor shall be responsible for the programmatic and fiscal aspects of the project, including:

(1) Creation of a Foster Grandparent Program Advisory Council as soon as possible, in accord with § 1208.3-5.

(2) Selection and employment of a full time director and other project staff, as approved.

(3) Development of specific assignments for volunteer service at or through approved volunteer stations.

(4) Recruitment, selection, orientation, in-service instruction and placement of Foster Grandparents.

(5) Orientation of volunteer station staff in working with foster grandparents before and, as appropriate, during their period of assignment.

(6) Provision of or arrangement for adequate on-site supervision and support of Foster Grandparents.

(7) Payment of volunteer stipends and arrangement of transportation and, when possible, meals for volunteers.

(8) Provision of the required non-federal cost sharing support of the project in cash or allowable in-kind support.

(9) Maintenance of an internal record-keeping system including information on Foster Grandparents, volunteer stations, children served, and other pertinent project information.

(10) Submission of such reports, including programmatic and fiscal reports and retention of such records as ACTION may require.

(11) Arrangement for appropriate recognition of volunteers for their services to the community.

(12) Adherence to ACTION's policies and procedures concerning or affecting the project.

(13) Annual project appraisal.

(14) Public information functions.

(b) The sponsor may contract, or otherwise arrange, with other organizations for services to help the sponsor carry out its responsibilities, such as transportation or accounting services. However, the sponsor has primary responsibility for the operation and administration of the project. Such responsibility cannot be contracted or delegated to any person, agency, or organization.

#### § 1208.2-5 Project staff.

(a) Project staff are employees of the sponsoring organization. Foster Grandparent Program volunteers may not serve as staff of the sponsor. Relatives of the sponsor's employees, or of a member of its Board of Directors, may not be employed in the project, except with the knowledge and concurrence of the project's Advisory Council and notification to ACTION.

(b) ACTION must concur in writing before the sponsor employs a project director. The director shall not be employed, paid, or used in another position while serving as director of the project.

#### § 1208.2-6 Suspension or termination of a grant and denial of application for refunding.

(a) A grant may be suspended or terminated because of the sponsor's material failure to comply with the terms and conditions of a grant. A grant will not be terminated unless the sponsor has been afforded reasonable notice and opportunity for a full and fair hearing. A grant may not be suspended, except in emergency situations, unless the

sponsor has been given reasonable notice and opportunity to show cause why such action should not be taken. Procedures for termination and suspension are contained in Part 1206, Subpart A of this chapter in the Code of Federal Regulations.

(b) Application for a continuation grant may not be denied unless the sponsor has been given reasonable notice and an opportunity to show cause why such action should not be taken. Procedures for denial of such an application are contained in Part 1206, Subpart B, of this chapter in the Code of Federal Regulations.

#### Subpart C—Project Operation

##### § 1208.3-1 Introduction.

Volunteers perform a variety of activities at various kinds of volunteer stations.

##### § 1208.3-2 Volunteer stations.

(a) Volunteer stations are public or private nonprofit agencies or organizations, or proprietary health care organizations, including privately-owned nursing homes, in or through which volunteers serve in accordance with program policies. Each child care facility serving as a volunteer station must be licensed or otherwise certified by the appropriate State or local government.

(1) Individual private homes are not volunteer stations. Volunteer stations select and recommend children with special or exceptional needs to be served in their homes by Foster Grandparents.

(2) Volunteer stations making assignments to private homes shall provide supervision to Foster Grandparents that is adequately responsive to the varying circumstances of the individual homes.

(b) Volunteer stations shall be within the service area of the project. The service area is the community or communities in which the sponsor is authorized to recruit volunteers and in which they are to serve. Existing or traditional boundaries for planning or for social service delivery systems may influence, but shall not predetermine the service area.

(c) Specific requirements for volunteer stations are:

(1) *Residential volunteer station.* A minimum of 10 Foster Grandparents must be placed in a single residential care facility that accommodates at least 30 or more children.

(2) *Nonresidential volunteer stations.* A minimum of 5 Foster Grandparents must be placed in a single non-residential care facility that accommodates at least 15 or more children.

(d) Volunteer station staff shall receive orientation from one sponsor, prior to the assignment of volunteers, concerning the Foster Grandparent Program, and volunteer service of Foster Grandparents. Additional orientation may be provided to volunteer station staff, if necessary, during the period Foster Grandparents serve in the volunteer station.

##### § 1208.3-3 Activities.

Foster Grandparent activities develop person-to-person, supportive relationships with children and do not provide service to the volunteer stations or any other organization in which volunteers may be serving. Activities serve the dual purpose of being personally meaningful to Foster Grandparents and providing support and companionship to children being served.

##### § 1208.3-4 Children served.

(a) Children served by Foster Grandparents shall be chronologically age 17 or under.

(b) Sponsors shall aim to provide volunteer services to those children with the greatest need; or potential for improvement; thus, activities should benefit children, such as physically and emotionally handicapped children in schools, day care or preschool establishments, or living in private residences.

(c) Volunteer stations shall select the children to be served with concurrence of the sponsor. The sponsor shall match and assign Foster Grandparents to selected children in cooperation with the volunteer station.

(d) Foster Grandparents shall preferably, but not exclusively, be assigned to two children, served individually, to maximize the gains to children from a supportive, person-to-person relationship with a mature adult.

##### § 1208.3-5 Memorandum of understanding.

Prior to assignment of volunteers, the sponsor and each volunteer station, shall jointly prepare and sign a Memorandum of Understanding for the purpose of clarifying working relationships, facilitating communication and promoting cooperation. The Memorandum must include the following information: The kind of volunteer station (residential, non-residential, etc.), the type of child care: *Provided*, The number of children with special needs to be served by Foster Grandparents and the potential number of the children eligible to receive service; the primary staff person at the volunteer station to whom the Foster Grandparent Program staff will relate; the number of Foster Grandparents planned for the volunteer station; the extent of the Foster Grandparent's benefits to be provided by the volunteer station: Meals, transportation, physical examinations, space, etc.; the safety provisions that will protect the Foster Grandparents, and other conditions mutually desired. In the case of Foster Grandparents serving in private homes, the Memorandum of Understanding shall also require that the volunteer station obtain a letter or other written document from the person(s) legally responsible for that child, authorizing or requesting volunteer service in the home and indicating what specific volunteer activities are requested. The Memorandum of Understanding must be reviewed for possible changes and updated annually by the sponsor and the

volunteer station. It may be amended at any time by mutual agreement.

##### § 1208.3-6 Advisory Council.

(a) The sponsor shall establish a Foster Grandparent Program Advisory Council to advise and assist the sponsor in planning, community support, project operational problems, and provide an annual appraisal of project operations and progress.

(b) The Advisory Council membership shall be representative of the community, including major private and public community agencies, minority groups, civic and service organizations and representation from volunteer stations and organizations concerned with the interests of older persons and voluntarism. One-fourth of the members shall be or represent low income persons, age 60 or older, and may include Foster Grandparents.

(c) The sponsor's chief executive or his designee, a member of its governing body, and the project director shall be members, but not officers of the Council. Only the member of the sponsor's governing board shall be a voting member of the Council.

#### Subpart D—Volunteers

##### § 1208.4-1 Eligibility.

(a) A Foster Grandparent shall be 60 years or older, no longer in the regular work force, determined by a physical examination to be capable of serving children with special or exceptional needs without detriment to self or child, and willing to accept supervision as required.

(b) (1) A Foster Grandparent applicant shall not be enrolled with an annual income from all sources which exceeds the income eligibility level for Foster Grandparents established by ACTION. The income eligibility level established in conformance with section 421(4) of Pub. L. 93-113, is determined by the national poverty line set forth in section 625 of the Economic Opportunity Act of 1964, as amended, to which is added for individual states the amount a state supplements Federal Supplemental Security Income payments for the aged.

(2) An enrolled Foster Grandparent shall lose eligibility for continued service as a consequence of annual income that, at the time such determination is made, has increased in excess of 120 percent of the income eligibility level established by paragraph (b) (1) of this section. The sponsor is responsible for an annual review of the income of each Foster Grandparent.

(c) The sponsor shall provide each volunteer with a physical examination prior to service to assure that he is able to serve without detriment to himself or to the children served. Physical examinations shall be provided annually thereafter as a benefit to the foster Grandparent.

(d) Participation as a Foster Grandparent may not be denied on the basis

of the race, creed, sex, national origin or political affiliation of the applicant. Sponsors shall ensure that special efforts are made to recruit and select qualified individuals from minority groups to serve as Foster Grandparents.

#### § 1208.4-2 Recruitment and instruction.

(a) The sponsor is responsible for recruitment of Foster Grandparents in accordance with the standards of eligibility in § 1208.4-1. Volunteer assignments in identified volunteer stations shall be determined before recruitment of Foster Grandparents begins.

(b) The sponsor shall provide or arrange an orientation of not less than 40 hours for each Foster Grandparent volunteer before regular service begins. Thereafter, each volunteer shall be provided group in-service instruction for a minimum of four hours each month in addition to in-service instruction provided to volunteers on assignments. Time spent in orientation and in-service meetings by Foster Grandparents earns the same benefits as regular volunteer service time.

#### § 1208.4-3 Terms of Service.

(a) *Service schedule.* Foster Grandparents normally serve four hours a day, for a total of twenty hours a week. Transportation time between the volunteer's home and place of assignment, and meal time during volunteer service, shall not be considered part of the service period. However, if it is required that meals are taken with the children served, such time shall count as volunteer service.

(b) *Stipends.* (1) Foster Grandparents receive an annual stipend, payable in regular instalments. The amount of such stipend is established by the Director of ACTION consistent with the availability of program funds and at a level that will permit and encourage eligible low-income older persons to serve as volunteers without cost to themselves.

(2) Sponsor shall establish policy and procedures to reduce the stipend to reflect the volunteer's absence from his assignment. Reasonable periods of vacation or absence because of sickness or other unusual situations, consistent with policies of the sponsor, are allowable.

(3) The sponsor may pay a higher stipend than that established by ACTION, but this excess payment may not be included in the federal cost or be counted as part of the non-federal cost sharing contribution required of the project sponsor.

(4) For federal, state and local purposes, no stipend shall be subject to any tax or charge or be treated as wages or compensation for the purposes of unemployment, temporary disability, retirement, public assistance, or similar benefit payments, or minimum wage laws. Stipends shall not in any way reduce or eliminate the level of or eligibility for assistance or services any Foster Grandparents may be receiving under any fed-

eral, state or local governmental program.

(c) *Transportation and meals.* (1) Sponsors shall provide or arrange for transportation for Foster Grandparents as needed, between their homes and volunteer assignments and for official project activities, including orientation, recognition ceremonies and attendance at Advisory Council meetings. Sponsors may also reimburse Foster Grandparents for transportation costs to the extent permitted by both grant and local funds and in accordance with transportation policy of the project. The sponsor will arrange for, or assist with, the cost of meals for orientation and volunteer assignments extending through a meal period within the limits of available resources and local project policy.

(d) *Insurance and safety.* (1) The sponsor shall ensure that Foster Grandparents driving their own vehicles while traveling to or from assignments have automobile liability insurance equal to the minimum required by state law or, in lieu thereof, the minimum specified in the Foster Grandparent Program Operations Handbook.

(2) The sponsor shall provide adequate insurance at such levels as defined in the Foster Grandparent Program Operations Handbook, of the following kinds:

(i) *Accident insurance.* If coverage is not required for Foster Grandparents under the state worker's compensation act, project sponsors shall provide accident insurance covering Foster Grandparents in travel to and from their place of assignment as well as during their volunteer service and during mealtime at the volunteer station.

(ii) *Personal liability insurance.* Third party, non-automobile, insurance shall be provided to protect Foster Grandparents in the event of personal injury or property damage claims arising out of their volunteer service.

(iii) *Excess automobile liability insurance.* This coverage is provided to protect Foster Grandparents against bodily injury or property damage claims arising out of the use of their automobiles to transport themselves and other Foster Grandparents to or from volunteer assignments. The insurance is to be excess over the insurance that a Foster Grandparent carries on his automobile or the limits of the state financial responsibility law, whichever is higher.

(3) The sponsor shall provide adequate automobile liability insurance protection for vehicles used by the project, as defined in ACTION policy, whether the vehicles be owned, non-owned or hired.

(4) Insurance coverage may be purchased from any source.

Sponsors shall ensure that adequate provisions for safety of Foster Grandparents are in force at each Volunteer Station.

(e) *Appeal of sponsor's actions and separations.* (1) The sponsor shall establish a procedure whereby a Foster Grandparent may appeal an action or

decision by the sponsor or project staff or the supervisory staff of the volunteer stations. The procedure shall provide for the review of the Foster Grandparent's appeal by the Advisory Council, or a committee thereof, which shall recommend to the chief executive of the sponsoring organization what action to take. Final decision on such an appeal shall be made by the chief executive.

(2) The sponsor may separate Foster Grandparents from the project for cause, including extended absence, chronic illness, misconduct, inability to perform volunteer assignments and income in excess of the standard set forth in § 1208.4-1(b). The sponsor shall provide a procedure to review appeals from such separations. The procedure shall be the same as that mentioned in the preceding paragraph in connection with appeals of sponsor's action.

#### § 1208.4-4 Legal Fees.

Counsel may be employed and counsel fees, court costs, bail and other expenses incidental to the defense of a volunteer may be paid in a criminal, civil, and administrative proceeding when such a proceeding arises directly out of the performance of the volunteer's activities. Part 1220, Vol. 45, Code of Federal Regulations establishes under what circumstances such expenses shall be paid.

#### Subpart E—General

#### § 1208.5-1 Coordination.

(a) The sponsor of a project under this part shall coordinate project activities with related groups and individuals, including those representing government, industry, labor, voluntary organizations, programs for the aging, including in particular State Agencies on Aging, and Area Agencies on Aging, and with other ACTION programs, to facilitate cooperation with existing community services and develop needed community support.

(b) ACTION will consult and coordinate with national, state and local agencies, the Federal Administration on Aging in particular, and nonprofit private organizations to promote the development of volunteer service opportunities for older persons.

#### § 1208.5-2 Grant awards.

ACTION will, within funds available, award a grant in writing to those applicants whose grant proposals provide the best potential for serving the purpose of the program.

#### § 1208.5-3 Grant conditions.

Fiscal and administrative policies and procedures set forth in ACTION instructions and handbooks shall be made available to sponsors at the time they receive a grant award. Grant termination, suspension, and denial of refunding appeal procedures are contained in Part 1206 of this Chapter.

#### § 1204.5-4 Project changes.

Permissible changes in the approved project plan shall be limited to minor

changes which do not substantially alter the substance of the project plan for which the grant was received. The following changes must receive prior written approval of ACTION:

(a) Appointment of the project director and subsequent replacements.

(b) Placement of Foster Grandparents with volunteer stations not included in the grant application or in subsequently approved project amendments.

(c) Reassignment of Foster Grandparents that cause an increase or decrease of 10 percent or more of the Foster Grandparents assigned to approved volunteer stations.

#### § 1208.5-5 Special legal limitations.

(a) *Political activities.* (1) No part of any grant shall be used to finance, directly or indirectly, any activity to influence the outcome of any election to federal office, or any voter registration activity. The term "election" has the same meaning given such term by section 301(a) of the Federal Election Campaign Act of 1971 (Pub. L. 92-225) and the term "Federal office" has the same meaning given such term by section 301(c) of such Act.

(2) No project shall be conducted in a manner involving the use of funds, the provision of services, or the employment or assignment of personnel in a manner supporting or resulting in the identification of such project with (i) any partisan or nonpartisan political activity or any other political activity associated with a candidate, or contending faction or group, in an election for public or party office, (ii) any activity to provide voters or prospective voters with transportation to the polls or similar assistance in connection with any such election, or any voter registration activity.

(3) No Foster Grandparent nor employee of a sponsor or volunteer station may take any action, when not serving in such a capacity, with respect to a partisan or non-partisan political activity that would result in the apparent identification of the Foster Grandparent Program with such activity.

(b) *Special limitations.* (1) The service of Foster Grandparent volunteers is limited to activities which would not otherwise be performed by employed workers and which will not supplant the hiring of or result in the displacement of employed workers, or impair existing contracts for service.

(2) All support, including transportation provided to volunteers shall be furnished at the lowest possible costs consistent with the effective operation of a volunteer project.

(3) No sponsor or volunteer station shall request or receive any compensation for services of Foster Grandparents supervised by it.

(4) No grant funds shall be directly or indirectly utilized to finance labor or anti-labor organizations or related activity.

(c) *Nondiscrimination.* (1) No person with responsibilities in the operation of

a project shall discriminate with respect to any activity or program because of race, creed, belief, color, national origin, age, or political affiliation.

(2) No person in the United States shall on the ground of sex be excluded from participation in, be denied the benefits of, be subjected to discrimination under, or be denied employment in connection with any project.

(d) *Religious activities.* Foster Grandparents will not give religious instruction, conduct worship services or engage in any other religious activity as part of their duties.

Issued in Washington, D.C., on October 10, 1974.

JOHN L. GANLEY,  
Deputy Director.

[FR Doc.74-24290 Filed 10-17-74;8:45 am]

## COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

[41 CFR Ch. 51]

### PREPARATION OF ENVIRONMENTAL STATEMENTS

#### Proposed Guidelines

Pursuant to the guidelines of the Council on Environmental Quality (CEQ), as published in the *FEDERAL REGISTER* on August 1, 1973 (38 FR 20549), appearing as 40 CFR Part 1500, the Committee for Purchase from the Blind and Other Severely Handicapped herewith publishes its proposed guidelines for the preparation of environmental statements required by section 102(2)(C) of the National Environmental Policy Act of 1969 dated January 1, 1970, Pub. L. 91-190. These proposed guidelines were developed in consultation with CEQ.

Before taking action to issue the proposed guidelines in final form, the Committee will consider comments and suggestions received in writing on or before December 2, 1974. Comments should be sent to the Executive Director, Committee for Purchase from the Blind and Other Severely Handicapped, 2009 Fourteenth Street, North, Arlington, Virginia 22201.

Issued in Washington, D.C., on October 18, 1974.

By the Committee.

C. W. FLETCHER,  
Executive Director.

## CHAPTER 51—COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

1. The Table of Parts is revised to read as follows:

#### TABLE OF PARTS

Part 51-1	General.
51-2	Committee for Purchase from the Blind and Other Severely Handicapped.
51-3	Central nonprofit agencies.
51-4	Workshops.
51-5	Procurement requirements and procedures.

#### Part

51-6 Preparation of Environmental Statements.

2. Part 51-6 is added as follows:

### PART 51-6—PREPARATION OF ENVIRONMENTAL STATEMENTS

#### Sec.

51-6.1	Purpose and authority.
51-6.2	Policy.
51-6.3	Implementation.
51-6.4	Identification of actions requiring environmental impact statements.
51-6.5	Time Scheduling.
51-6.6	General considerations as to utilization of impact statements.
51-6.7	EPA procedures under the Clean Air Act.
51-6.8	Securing information required in preparation of environmental impact statements.
51-6.9	Obtaining of comments on draft statements.
51-6.10	Content of environmental impact statements.
51-6.11	Filing and distribution of environmental impact statements.
51-6.12	Availability of environmental impact statements to the public.
51-6.13	Utilization of final impact statements in decisional process.
51-6.14	Comments on statements of other agencies.

AUTHORITY: Pub. L. 91-190, January 1, 1970. (42 U.S.C. 4332(2)(C)).

#### § 51-6.1 Purpose and authority.

(a) *Authority.* The following procedures are established, after consultation with the Council on Environmental Quality, in accordance with the requirements of section 102(2)(C) of the National Environmental Policy Act of 1969, Public Law 91-190 (42 U.S.C. 4332(2)(C)), hereinafter referred to as NEPA; section 2 of Executive Order 11514 (42 U.S.C. 4321 Note); and 1500.3 of the Guidelines for Preparation of Environmental Impact Statements promulgated by the Council on Environmental Quality, 40 CFR Part 1500 (38 FR 20550), hereby incorporated by reference and hereafter referred to as the CEQ Guidelines.

(b) *Scope.* These procedures apply to the recognition of the need for environmental impact statements with respect to major actions significantly affecting the quality of the human environment, to the preparation of such statements, and to their circulation and review within and outside the Committee for Purchase from the Blind and Other Severely Handicapped (hereinafter, the Committee). The procedures also provide for appropriate action with respect to environmental impact statements submitted to the Committee for comment. These procedures are to be applied in the light of the definitions and instructions in the CEQ guidelines.

#### § 51-6.2 Policy.

These procedures provide for:

(a) Designation of the official responsible for environmental impact statements.

(b) Identification of the proposed actions requiring environmental impact

statements, the pertinent review process, and the time scheduling for consultations required by section 102(2)(C) of NEPA.

(c) Obtaining of the information required in the preparation of environmental impact statements.

(d) Consultation with and taking account of the comments of appropriate Federal, State, and local agencies, including the Administrator of the Environmental Protection Agency as to the environmental impact of matters under section 309 of the Clean Air Act, as amended (42 U.S.C. 1857h-7), and 1500.9 (b) of the CEQ Guidelines.

(e) Making suitable arrangements as required by section 2(b) of Executive Order 11514 and 1500.6(e) of the CEQ Guidelines, for timely public information on Committee plans and programs with environmental impact, including procedures relating to (1) the use of environmental impact statements in Committee policy and action review processes, (2) the appropriate distribution of environmental impact statements, and (3) the availability to the public of environmental impact statements and comments received thereon.

#### § 51-6.3 Implementation.

(a) There shall be an Environmental Quality Officer (EQO), designated, who shall be responsible for (1) identifying actions requiring an environmental impact statement; (2) making sure that each required statement is prepared timely and with the prescribed content; (3) ensuring compliance with the requirements of NEPA, the CEQ Guidelines, and these procedures; (4) maintaining compliance with all applicable scheduling, consultation, circulation, and publicity requirements; (5) receive all environmental impact statements submitted by other agencies to the Committee and coordinate the appropriate review and reply; (6) perform such other functions as are specified in these procedures or are appropriate under the CEQ Guidelines or other instructions or recommendations of CEQ. The fulfillment of these duties will require constant and active attention by the EQO to insure that the possible timely applicability of NEPA is taken into account in all relevant cases and that, if an impact statement may be needed, the requirements of the Act, the CEQ Guidelines, these procedures are promptly and fully followed.

(b) The EQO shall be responsive to requests from the CEQ for reports or other information in connection with the implementation of NEPA and for the preparation and circulation of environmental impact statements, as required by 1500.11 (f) of the Guidelines. In addition to the above, all contacts with CEQ, EPA, and other governmental agencies, or with nongovernmental matters shall be through or coordinated with the EQO.

(c) Letters transmitting environmental impact statements to the CEQ (§ 51-6.11(a), below), as well as any reports or other communications to the Council, shall be addressed to its Chairman and shall be signed by the Execu-

tive Director of the Committee. Communications announcing decisions to prepare environmental impact statements (§ 51-6.4(c), below) or transmitting final statements for the information of agencies or persons commenting on draft statements (§ 51-6.11(c), below) shall also be signed by the Executive Director and, in the case of a Federal agency, shall be addressed to its departmental EQO or equivalent official.

#### § 51-6.4 Identifying major actions significantly affecting the environment.

(a) Under the Committee's responsibility as prescribed by law, the only major actions which it may take that could significantly effect the quality of the environment are those involving the addition of a commodity or service to the Procurement List established by the Committee. The Procurement List is a listing of commodities and services which Federal Government departments and agencies must procure from sheltered workshops serving the blind or other severely handicapped.

(b) The statutory clause "Major Federal Actions significantly affecting the quality of the human environment" is to be construed by the Committee with a view to the overall, cumulative impact of the action proposed, related to Federal actions and projects in the area and further actions contemplated. The Council on the basis of a written assessment of the impact involved is available to assist in determining whether specific actions require impact statements. Significant effects can also include actions which may have both beneficial and detrimental effects, even if on balance the Committee believes that the effect will be beneficial. Significant effects also include secondary effects. While a precise definition of environmental "significance," valid in all contexts, is not possible, effects to be considered in assessing significance include, but are not limited to, those outlined in Appendix II of the guidelines. In all cases early notification shall be given by the EQO, and a determination as to the potential environmental effects of the action and the consequent need or absence of need to submit an impact statement in connection with it shall be made and, in the case of a negative determination in accordance with paragraph (f) of this section, appropriately documented. If it appears appropriate in making such a determination, agencies outside the Committee having expertise in matters involved should be consulted. Agencies with special environmental expertise are listed in Appendix II of the CEQ Guidelines. Non-government organizations or individuals believed to have special knowledge should also be consulted when it appears appropriate. The appraisal provided for in this paragraph shall take place as early in the Committee's consideration of the proposed action as possible (Guidelines, 1500.2(a)).

(c) When a decision to prepare an environmental impact statement on a proposed action is made, the Committee shall promptly announce this fact in the

FEDERAL REGISTER (see CEQ Guidelines, 1500.6(e)).

(d) The EQO shall cause to be maintained for public inspection a list of all matters to which it has been decided to prepare an impact statement, shall consolidate the list quarterly, and as it is so revised, shall transmit it to the Council (see CEQ Guidelines, 1500.6(e)).

(e) The Committee shall determine whether a hearing should be held with respect to an environmental matter in accordance with criteria set forth in 1500.7(d) of the Guidelines. Normally, all hearings contemplated in this paragraph should be based on a draft environmental impact statement, which should in any event be made available to the public at least 15 days before the hearing.

(f) If as a result of the consideration of a proposed action as provided for by paragraph (b) of this section it is determined that no environmental impact statement is required under section 102 (2)(C) of NEPA, a succinct but complete environmental assessment (negative impact statement) describing the action, the environmental impacts considered and the reasons why it has been concluded that an impact statement need not be filed shall be prepared. The EQO shall prepare such an assessment. A file of such assessments, available for public inspection, shall be maintained by the EQO (see CEQ Guidelines, 1500.6(e)).

#### § 51-6.5 Time scheduling.

(a) In general, the timing of the preparation, circulation, submission, and public availability of environmental impact statements will be observed as follows:

(1) Not less than 45 days for comments on draft statements, subject to a possible extension of up to 15 days (see CEQ Guidelines, 1500.9(f));

(2) Not less than 90-day and 30-day periods, respectively, which may run concurrently, for public availability of draft and final statements prior to proposed actions (CEQ Guidelines, 1500.11(b));

(3) Not less than 15 days for public availability of draft statements prior to any relevant hearings on proposed actions (CEQ Guidelines, 1500.7(d)).

(b) The periods specified in the preceding subsection are to be calculated from the date on which the CEQ published in the FEDERAL REGISTER the weekly list in which the respective statement is included (CEQ Guidelines, 1500.11(c)).

(c) In the event of emergencies or overriding considerations of expense, the CEQ may be consulted, through the EQO, on possible variations of the specified periods (CEQ Guidelines, 1500.11(e)).

#### § 51-6.6 General considerations as to utilization of impact statements.

(a) The preparation of a requisite impact statement should be undertaken as early as possible in the Committee's process of considering the respective proposal. The normal process for consideration and review of actions shall be

followed, with such adjustment, particularly as to time periods, as may be necessary to permit ample fulfillment of the requirements of NEPA, the CEQ Guidelines, and these procedures (see CEQ Guidelines, 1500.3(a) and 1500.11(b)).

(b) As indicated in 1500.9(a) of the CEQ Guidelines and contemplated in § 51-6.4(b) above, a general principle to be applied is to obtain the views of other agencies at the earliest feasible time in the development of program or project proposals. Duplication in the clearance process should be avoided, but significant changes or redirections of a proposal may call for further environmental analysis and comment (CEQ Guidelines, 1500.11(b)).

#### § 51-6.7 EPA procedures under the Clean Air Act.

(a) Comments from the Environmental Protection Agency (EPA) should be requested on the environmental impact of any major action significantly affecting the quality of the human environment, in areas of EPA responsibility, which include: Air or water quality, noise abatement and control, pesticide regulations, solid waste disposal, and generally applicable environmental radiation criteria and standards. (See 1500.9(b) of the CEQ Guidelines and section 309 of the Clean Air Act (42 U.S.C. 1857h-7).)

(b) Where an environmental impact statement is being filed with EPA for comment, no special additional procedure is required.

#### § 51-6.8 Securing information required in preparation of environmental impact statements.

(a) All available resources should be tapped in developing the factual and analytic information and reference sources required in the preparation of an environmental impact statement. The assistance of other agencies with jurisdiction by law or special expertise concerning the environmental impacts involved should be sought. See § 51-6.4(b) above, and 1500.9(a) and Appendixes II and III of CEQ Guidelines, which list the agencies to be consulted.

(b) If the EQO has difficulty in securing requisite information or needs guidance in making the necessary analysis, he should consult with staff members of the Council on Environmental Quality, the Office of Management and Budget, and the Environmental Protection Agency, or other pertinent sources.

#### § 51-6.9 Obtaining of comments on draft statements.

(a) With respect to draft environmental impact statements, it is essential that the EQO consult with and take account of the comments of appropriate Federal, State, and local agencies. Initially this consultation may take the form of informal factfinding and analytical advice in the preparation of impact statements, as contemplated in §§ 51-6.4 and 51-6.8 above, but in any event, consultation shall involve the for-

mal solicitation of review and comments on the draft statement (CEQ Guidelines, 1500.9(a)-(b)). When appropriate, the procedures set forth in Office of Management and Budget Circular No. A-95 for obtaining state and local comments through clearing houses shall be utilized (CEQ Guidelines, 1500.9(c)).

(b) Comments should also be requested from private organizations or persons which appear to have a special interest in some significant environmental aspect of the proposed action (CEQ Guidelines, 1500.9(d)).

#### § 51-6.10 Content of environmental impact statements.

(a) Environmental impact statements are to provide adequate, meaningful, and factual information and analysis to permit an evaluation of the action from the environmental standpoint. Perfunctory generalities are not acceptable, but, on the other hand, information should be conveyed as succinctly and understandably as the subject will permit. Quantitative information about the proposed action, including actual or estimated data on its probable effects, should be included to the furthest extent practicable. Where a cost-benefit analysis of the proposed action has been prepared, this analysis should be attached to the environmental impact statement sent to the commenting agencies and to the Council on Environmental Quality and made available to the public.

(b) The basic content requirements for a draft statement are set forth in 1500.8 of the CEQ Guidelines and those for a final statement in 1500.10. Appendix I of the Guidelines provides the format of a summary sheet which must accompany each draft and final statement. Statements shall follow the prescribed outline and content requirements as closely as is feasible in each particular case.

(c) All reasonable alternatives and their environmental impacts are to be discussed, regardless of whether or not they are within the authority of the Committee (CEQ Guidelines 1500.8(a)(4)).

(d) Any substantial points of view in opposition to the proposed action on environmental grounds which are known to exist shall be described in the draft statement as well as in the final statement. So far as possible, quotations of salient passages from expressions of such points of view should be included to make sure there is no doubt that they have been accurately presented. As to final statements, CEQ has directed (Guidelines 1500.10(a)) that all substantive comments (or if any is exceptionally voluminous, a summary thereof) received on the draft should be attached to each copy, whether or not each such comment is thought to merit individual discussion in the text of the statement.

(e) Each draft and final statements should refer to the underlying studies, reports and other documents considered and should indicate how such documents may be obtained. In general, with the exception of standard reference docu-

ments such as Congressional materials, the Committee should maintain a file of the respective documents which may be consulted by interested persons. Even if especially significant documents are attached to the statement, care should be taken to insure that it remains an essentially self-contained instrument easily understood by the reader without the need for undue cross reference (CEQ Guidelines, 1500.8(b)).

(f) Environmental impact statements should, to the extent possible, include statements or findings concerning environmental impact required by other statutes, such as section 106 of the National Historic Preservation Act of 1966 (16 U.S.C. 470f), with a view to the issuance of a single document meeting all applicable requirements. Any procedures or instructions issued by the Federal agency having jurisdiction with regard to such a statute should, of course, be consulted in the preparation of the combined statement (CEQ Guidelines 1500.9(a)).

#### § 51-6.11 Filing and distribution of environmental impact statements.

(a) Five copies of each draft or final statement are to be filed with CEQ (Guidelines, 1500.11(a) and supplemental CEQ instructions of March 1, 1974).

(b) At the same time that each draft statement is filed with the Council, copies should also be sent to all pertinent entities, i.e., Federal, state, and local agencies, and private organizations and individuals (CEQ Guidelines 1500.9).

(c) At the same time that each final statement is filed with the Council, copies should also be sent to all entities which made substantive comments on the draft statement, or requested a copy, so that they may be appropriately informed (CEQ Guidelines, 1500.10(b)).

#### § 51-6.12 Availability of environmental impact statement to the public.

(a) Environmental impact statements, both draft and final, and any substantive comments thereon shall be made available to the public pursuant to the Freedom of Information Act (5 U.S.C. 552). When appropriate, copies of each statement shall also be made available through State, regional, and metropolitan clearinghouses, or such alternate point as the Governor of the respective State may designate to CEQ (Guidelines, 1500.11(d)).

(b) A notice of the filing and availability of each environmental impact statement, draft and final, shall be inserted in the FEDERAL REGISTER. When appropriate, other methods for publicizing the existence of draft statements, such as, for example, supplying information to local newspapers or sending notice direct to non-governmental groups or persons believed to be interested (CEQ Guidelines, 1500.9(d)), should be utilized.

(c) Each statement should be reproduced in a number of copies sufficient to meet the anticipated demands, not only of agencies, organizations, and individuals who must receive copies as required

by § 51-6.11 above (1500.9 and 1500.10(b)) of the CEQ Guidelines), but also for a reasonable number of additional requests. Copies to be made available to the public shall normally be provided without charge, but when copies are significant, a fee may be established which shall not exceed the actual cost per copy of reproducing the copies additional to those required to be sent to other Federal agencies (CEQ Guidelines 1500.9(d)).

**§ 51-6.13 Utilization of final impact statement in the decisional process.**

(a) Section 102(2) of NEPA requires that the final environmental impact statement shall accompany the proposal to which it relates through the Committee's decision process.

(b) In this process pertinent non-environmental factors are to be considered and balanced with those relating to the environment. It is requisite that the entire process be based on an administrative record in which the statement is included and fully taken into account together with the relevant nonenvironmental factors presented in the record. Although no significant factor should be neglected, the document should give particular attention to any appreciable adverse environmental effects set forth in the impact statement and should closely, though succinctly, balance them with any other relevant interests and considerations of Federal policy set forth in the record, including particularly an analysis of the alternatives to the proposed action and their relationship to the nonenvironmental factors. The final decision should contain sufficient analysis to make clear the essential basis of the determination.

**§ 51-6.14 Comments on statements of other agencies.**

(a) As set forth in § 51-6.3(a) (6) above and pursuant to Appendix III of the CEQ Guidelines, the EQO shall receive all environmental impact statements submitted by other agencies for comment and coordinate the appropriate review and reply. If the Committee received a request for comment direct from another agency, the request, together with the respective statement, shall be referred to the EQO for appropriate action.

(b) Comments should of course be confined to matters within the jurisdiction or expertise of the Committee. However, comments need not be limited to environmental aspects but may relate to fiscal, economic, and other non-environmental matters of concern to the Committee.

(c) At the time comments are sent to the agency responsible for a statement, five copies shall be forwarded to the CEQ by the EQO (CEQ Guidelines, 1500.11(a)). Copies of replies indicating that the Committee has no comment on an impact statement should not be forwarded to the CEQ.

(d) With regard to requests for comment on statements relating to proposals for legislation, close coordination shall be maintained between the EQO and the

Committee's counsel in relation to the latter's normal responsibility concerning the Committee's comments on legislative proposals themselves.

[FR Doc.74-24317 Filed 10-17-74;8:45 am]

## ENVIRONMENTAL PROTECTION AGENCY

[40 CFR Part 52]

[FRL 281-7]

### APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

#### Parking Management Regulations; Notice of Withdrawal

The notice of proposed rulemaking involving amendments to the parking management regulations for Houston-Galveston, Texas, as published in the FEDERAL REGISTER of August 22, 1974 (39 FR 30456), is hereby withdrawn.

These parking management regulations were deferred by the U.S. Court of Appeals for the Fifth Circuit in *State of Texas v. EPA* on August 7, 1974, pending reevaluation of required hydrocarbon emission reduction in the Houston area. Therefore, it has been decided not to hold a public hearing on the proposed amendments at this time. However, if it appears that parking management will remain in the transportation control plan for Houston-Galveston, a public hearing will be scheduled with appropriate notification to consider these proposed amendments.

**AUTHORITY:** (Secs. 110(c) and 301(a) of the Clean Air Act, (42 U.S.C. 1857c-5(c) and 1857(g)).

Dated: October 10, 1974.

JOHN QUARLES,  
Acting Administrator.

[FR Doc.74-24249 Filed 10-17-74;8:45 am]

[FRL 256-2]

[40 CFR Part 52]

#### UTAH

#### Approval and Promulgation of Implementation Plans

On May 31, 1972 (37 FR 10842), pursuant to section 110 of the Clean Air Act, as amended, and 40 CFR Part 51, the Administrator of the Environmental Protection Agency approved, with specific exceptions, a plan for implementation of the national ambient air quality standards submitted by Utah. On July 27, 1972 (37 FR 15094), the Administrator proposed regulations to correct deficiencies in the regulatory provisions of the Utah plan. The proposed regulations included an emissions limitation requiring 76 percent control of the total potential emissions of sulfur oxides from the Kennecott Copper Corporation copper smelter near Magna, Utah. This degree of control was based on air quality data for Magna contained in the Utah Implementation Plan which indicated a maximum 24-hour sulfur dioxide concentration of 0.3 parts per million (ppm).

Although public hearings on the proposed regulations were conducted in Salt

Lake City by the Environmental Protection Agency on September 14, 1972, and November 9, 1972, no final action was taken on the sulfur oxides regulation because diffusion model results indicated that control requirements in excess of 99 percent would be necessary to attain the national standards for sulfur dioxide (SO<sub>2</sub>) in areas of higher terrain than the state's Magna station. In addition, shortly after the public hearings, a 24-hour SO<sub>2</sub> concentration of 0.4 ppm was recorded by the state at Magna, indicating that the proposed regulation would not achieve the national standards.

In order to obtain more comprehensive ambient SO<sub>2</sub> data, EPA established a 3-station monitoring network in the vicinity of the smelter in April, 1973. The highest 3-hour and 24-hour concentrations to date from these stations are listed below:

Station	Maximum 3-hour concentration (ppm)	Maximum 24-hour concentration (ppm)
Webster School (Magna).....	1.09	0.51
Kennecott Crusher (Bonnaville).....	2.29	1.03
Silver Sands Beach.....	5.64	1.83

Although the highest ambient levels were recorded at the Silver Sands Beach site, located approximately 2 kilometers northwest of the smelter, Kennecott Copper Corporation has demonstrated, by use of fluorescent particle tracer studies and diffusion modeling, that this station is greatly influenced by fugitive emissions of SO<sub>2</sub> from the buildings and a pond containing acid plant scrubber water, and emissions from the acid plant stacks. Since these low-level emissions largely account for the high concentrations at the Beach Station, the Administrator has determined that an emission limitation on the stack emissions based on these Beach measurements would not result in attainment of the short-term national standards for sulfur dioxide unless the major portion of the low-level emissions was captured or eliminated. Therefore, the Administrator is proposing today, a regulation requiring the use of best engineering techniques for reducing the escape of sulfur oxides emissions to the atmosphere and the capture and venting of such emissions through the highest stacks serving the facility. No treatment of these captured emissions by sulfuric acid plants is presently required because of the low concentration of SO<sub>2</sub> in the gas stream. Adjustment of the maximum concentrations at the Beach Station to account for the expected reduction in fugitive emissions results in an estimated maximum 24-hour concentration of SO<sub>2</sub> less than 1.0 ppm.

In order to determine maximum ambient concentrations of SO<sub>2</sub> in areas to which the public has access, EPA has utilized a diffusion model which assumed that 80 percent of the existing fugitive SO<sub>2</sub> emissions and all of the acid plant emissions would be vented through the existing stacks and that the acid plant

scrubber water would be neutralized by October, 1974, as required by the Kennecott Copper Corporation National Pollutant Discharge Elimination System water permit (Discharge permit No. 0000051 issued 2/20/74). On the basis of the modeling results, EPA has determined that ambient levels of sulfur dioxide at Lake Point, located approximately 5 kilometers from the smelter, can be expected to reach 1.17 ppm (3041  $\mu\text{g}/\text{m}^3$ ) for 24 hours and 2.92 ppm (7592  $\mu\text{g}/\text{m}^3$ ) for 3 hours. The predicted 24-hour concentration at Lake Point is comparable to the maximum 24-hour concentration measured at the Kennecott Crusher station. Using these data as the basis for the proposed regulation would require 88 percent control of the existing  $\text{SO}_2$  emissions from the smelter to achieve the primary 24-hour standard for sulfur dioxide and 83 percent control to achieve the secondary 3-hour standard.

Since approximately 60 percent of the potential  $\text{SO}_2$  emissions from the smelter are currently captured by acid plants, the overall control requirements to attain the primary and secondary standards for  $\text{SO}_2$  would be 95.2 and 93.2 percent, respectively. No consideration was given in the EPA modeling to the new 1200 foot stack planned by Kennecott. This approach is consistent with the opinion of the Fifth Circuit Court of Appeals in "NRDC et al. vs EPA," 489 F. 2d 390 (CA5, 1974). In that case, the Court held that dispersion techniques such as tall stacks may not be utilized as a means of achieving ambient standards unless constant control techniques sufficient to achieve the standards are not reasonably available. As is hereafter indicated, constant control techniques sufficient to achieve the standards will be available to Kennecott.

On July 27, 1972 (37 FR 15080), the Administrator granted a 2-year extension of the attainment of the primary standards for sulfur dioxide in the Wasatch Front Region. The extension was granted because the degree of control proposed on that date for the Kennecott smelter required more than reasonably available control technology (RACT) for the existing facility. Since the original proposal, Kennecott has announced plans to significantly modify its smelting process by replacing the existing reverberatory furnaces with Noranda reactors, reducing the use of existing converters and constructing additional acid plant capacity. Because the modifications will not be completed until July 31, 1977, the 2-year extension granted on July 27, 1972, will remain in effect.

Kennecott has recently calculated estimates of fugitive emissions from the modified process which indicate that both the escaping and captured fugitive emissions will be significantly lower than the estimates for the existing smelter used in the EPA model. Correcting for these new estimates results in the proposed control of 87 percent of existing  $\text{SO}_2$  emissions. This degree of control

translates to allowable emissions of 5400 pounds per hour of  $\text{SO}_2$ , maximum six hour average, which is proposed below.

In order to determine if the proposed limitation is achievable through the use of RACT, Kennecott's estimated sulfur balance was utilized, along with the Administrator's determination of RACT. For the modified Kennecott smelter, RACT consists of treating the gas streams from the reactors and converters with the presently installed acid plants operating at 97 percent efficiency and the proposed new acid plant operating 99.5 percent efficiency. Using these criteria, RACT for the planned facility would result in an emission rate of 4422 pounds per hour, well below the proposed emission rate of 5400 pounds per hour. This determination of the adequacy of RACT to achieve the Ambient Air Quality Standards will be reviewed after consideration has been given to any public comments provided. Should such information document the need for supplementary controls, consideration will be given to amending the regulation prior to promulgation accordingly. The proposed regulations include compliance schedules, along with increments of progress, which require Kennecott to achieve final compliance with the proposed regulations no later than July 31, 1977.

On May 31, 1972 (37 FR 10842), the Administrator disapproved a portion of the Utah Implementation Plan dealing with public availability of emission data. On July 27, 1972, the Administrator disapproved Utah's legal authority to release emission data to the public (37 FR 15090) and proposed a regulation to satisfy the requirements of §§ 51.10(e) and 51.11(a) (6) (37 FR 15110). Following public hearings on September 14, 1972, and November 9, 1972, the Administrator promulgated the final regulation as § 52.2324 on May 14, 1973 (38 FR 12709).

On June 13, 1974, the state submitted supplementary information, including a copy of reenacted legislation (section 26-24-16. Periodic reports of emissions—Availability of the information, Utah Code Annotated, 1953) which fulfills the requirements of §§ 51.10(e) and 51.11(a) (6). Consequently, the Administrator is proposing to revoke § 52.2324 in this publication.

A public hearing on the proposed regulations and withdrawal action will be held on November 19, 1974, at the State Auditorium, 203 State Capitol Building, Salt Lake City, beginning at 10:00 a.m., continuing until all present are heard, and reconvening at 7:00 p.m. Copies of the proposals and the supporting technical documentation are available for inspection at the Region VIII Office, Environmental Protection Agency, Suite 900, 1860 Lincoln Street, Denver, Colorado 80203; the Freedom of Information Center, Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460; and at the Environmental Protection Agency, Room 4223, Federal Building, 125 South State Street, Salt Lake City, Utah 84111.

Interested persons may also participate in this rulemaking by submitting written comments, preferably in triplicate, to the Regional Administrator, Environmental Protection Agency, Region VIII, Suite 900, 1860 Lincoln Street, Denver, Colorado 80203. All relevant comments received on or before November 18, 1974, will be considered. Comments received will be available for public inspection during normal business hours at the EPA Region VIII Office and the Freedom of Information Center.

This notice of proposed rulemaking is issued under the authority of sections 110 (c) and 301(a) of the Clean Air Act, 42 U.S.C. 1857 et seq.

Dated: October 10, 1974.

JOHN QUARLES,  
Acting Administrator,  
Environmental Protection Agency.

It is proposed to amend Part 52 of Chapter I, Title 40 of the Code of Federal Regulations, as follows:

#### Subpart TT—Utah

1. In § 52.2320, paragraph (c) is revised to read as follows:

§ 52.2320 Identification of plan.

(c) Supplemental information was submitted on:

(1) May 18 and September 13, 1972, and April 13, 1973.

(2) June 13, 1974 by the Utah State Division of Health.

2. Section 52.2325 is amended by adding paragraphs (c) and (d).

§ 52.2325 Control strategy: Sulfur oxides.

(c) Regulation for control of fugitive sulfur oxides emissions (Wasatch Front Intrastate Region). (1) The owner or operator of the Kennecott Copper Company smelter located in Salt Lake County, Utah, in the Wasatch Front Intrastate Region shall utilize best engineering techniques for reducing escape of pollutants to the atmosphere and to capture sulfur oxides emissions and vent them through a stack or stacks. Such techniques shall include, but not

(i) Installing and operating primary and secondary hoods on each active reactor,

(ii) Installing and operating primary and secondary hoods on each active converter,

(iii) Maintaining all ducts, flues, and stacks in a leakfree condition,

(iv) Maintaining all reactors and converters under normal operating conditions in such a fashion that out leakage of gases to the air will be prevented to the maximum extent possible,

(v) Wherever possible, ducting emissions through the tallest stack or stacks serving the facility, and

(vi) Wherever possible, passing the effluent from all hooding through the tallest stack or stacks serving the facility.

(2) (i) The owner or operator of the smelter subject to this paragraph shall

comply with the compliance schedule specified below:

(a) *December 1, 1974.* Submit a final plan to the Administrator for meeting the requirements of subparagraph (1) of this paragraph. Such plans shall be subject to approval by the Administrator.

(b) *February 1, 1974.* Let contracts or issue purchase orders for emission capture systems.

(c) *April 1, 1975.* Initiate on-site construction and/or installation of emission capture equipment.

(d) *May 31, 1977.* Complete on-site construction and/or installation of emission capture system.

(e) *July 31, 1977.* Achieve final compliance with the requirements of subparagraph (1) of this paragraph.

(ii) Any owner or operator of the smelter subject to this paragraph may submit to the Administrator, no later than thirty (30) days after the effective date of this paragraph, a proposed alternative compliance schedule. No such compliance schedule may provide for final compliance after July 31, 1977. If approved by the Administrator, such schedule shall satisfy the compliance schedule requirements of this subparagraph for the affected source.

(iii) The owner or operator of the smelter subject to the requirements of this subparagraph shall certify to the Administrator within five days after the deadline for each increment of progress, whether or not the required increment of progress has been met.

(d) *Regulation for control of sulfur oxides emissions (Wasatch Front Intrastate Region).* (1) The owner or operator of the Kennecott Copper Company smelter located in Salt Lake County, Utah, in the Wasatch Front Intrastate Region shall not discharge or cause the discharge of sulfur dioxide into the atmosphere in excess of 5400 pounds per hour (2430 kg/hr) maximum 6-hour average as determined by the method specified in subparagraph (4) of this paragraph. Such limitation shall apply to the sum total of sulfur dioxide emissions from the smelter premises, but not including up-captured fugitive emissions and those emissions due solely to the use of fuel for space heating or steam generation.

(2) (i) The owner or operator of the smelter subject to this paragraph shall comply with the compliance schedule specified below:

(a) *December 1, 1974.* Submit a final plan to the Administrator for meeting the requirement of subparagraph (1) of this paragraph. Such plan shall be subject to approval by the Administrator.

(b) *February 1, 1974.* Let contracts or issue purchase orders for emission control systems and process modifications.

(c) *April 1, 1975.* Initiate on-site construction and/or installation of emission control equipment and process change.

(d) *May 31, 1977.* Complete on-site construction and/or installation of emission control system and process change.

(e) *April 1, 1975.* Initiate on-site compliance with the requirements of subparagraph (2) of this paragraph.

(ii) The owner or operator of the smelter subject to the requirements of this subparagraph shall certify to the Administrator within five days after the deadline for each increment of progress, whether or not the required increment of progress has been met.

(iii) Notice must be given to the Administrator at least 10 days prior to conducting a performance test to afford him the opportunity to have an observer present.

(iv) The owner or operator of the smelter subject to this paragraph which is presently in compliance with the requirements of subparagraph (1) of this paragraph may certify such compliance to the Administrator within thirty (30) days of the effective date of this paragraph. If such certification is acceptable to the Administrator, the applicable requirements of this subparagraph shall not apply to the certifying sources. The Administrator may request whatever supporting information he considers necessary to determine the validity of the certification.

(v) The owner or operator of the smelter subject to this paragraph may submit to the Administrator, no later than thirty (30) days after the effective date of this paragraph, a proposed alternative compliance schedule. No such compliance schedule may provide for final compliance after the date for attainment of national standards in the applicable implementation plan. If approved by the Administrator, such schedule shall satisfy the compliance schedule requirements of this subparagraph for the affected source.

(3) (i) The owner or operator of the smelter to which this paragraph is applicable shall install, calibrate, maintain, and operate a measurement system(s) for continuously monitoring sulfur dioxide emissions and stack gas volumetric flow rates in each stack which emits 5 percent or more of the total potential (without emission controls) hourly sulfur oxides emissions from the source. For the purpose of this paragraph, "continuous monitoring" means the taking and recording of at least one measurement of sulfur dioxide concentration and stack gas flow rate reading from the effluent of each affected stack, in each 15-minute period.

(ii) No later than May 31, 1977 and at such other times in the future as the Administrator may specify the sulfur dioxide concentration measurement system(s) installed and used pursuant to this paragraph shall be demonstrated to meet the measurement system performance specifications prescribed in Appendix D to this part.

(iii) No later than May 31, 1977 and at such other times in the future as the Administrator may specify the stack gas volumetric flow rate measurement system(s) installed and used pursuant to this paragraph shall be demonstrated to meet the measurement system performance specifications prescribed in Appendix E to this part.

(iv) The Administrator shall be notified at least 10 days in advance of the start of the field test period required in Appendices D and E to this part to afford the Administrator the opportunity to have an observer present.

(v) The sampling point for monitoring emissions shall be in the duct at the centroid of the cross section if the cross sectional area is less than 4.647 m<sup>2</sup> (50 ft<sup>2</sup>) or at a point no closer to the wall than 0.914 (3 ft) if the cross sectional area is 4.647 m<sup>2</sup> (50 ft<sup>2</sup>) or more. The monitor sample point shall be in an area of small spatial concentration gradient and shall be representative of the average concentration of the duct.

(vi) The measurement system(s) installed and used pursuant to this section shall be subjected to the manufacturer's recommended zero adjustment and calibration procedures at least once per 24-hour operating period unless the manufacturer(s) specifies or recommends calibration at shorter intervals, in which case such specifications or recommendations shall be followed. Records of these procedures shall be made which clearly show instrument readings before and after zero adjustment and calibration.

(vii) Six-hour average sulfur dioxide emission rates shall be calculated in accordance with subparagraph (4) of this paragraph, and recorded daily.

(viii) The owner or operator of the smelter subject to this paragraph shall maintain a record of all measurements required by this paragraph. Measurement results shall be expressed as pounds of sulfur dioxide emitted per six hour period. A six hour average value calculated pursuant to subparagraph (4) (i) of this paragraph shall be reported as of each hour for the preceding six hour period. Results shall be summarized monthly and shall be submitted to the Administrator within 15 days after the end of each month. A record of such measurements shall be retained for at least two years following the date of such measurements.

(ix) The continuous monitoring and recordkeeping requirements of this subparagraph shall become applicable on July 31, 1977.

(4) (i) Compliance with the requirements of subparagraph (1) of this paragraph shall be determined using the continuous measurement system(s) installed, calibrated, maintained and operated in accordance with the requirements of subparagraph (3) of this paragraph. For all stacks equipped with the measurement system(s) required by subparagraph (3) of this paragraph, a six-hour average sulfur dioxide emission rate shall be calculated as of the end of each clock hour, for the preceding six hours in the following manner:

(a) Divide each 6-hour period into 24 15-minute segments.

(b) Determine on a compatible basis a sulfur dioxide concentration and stack gas flow rate measurement for each 15-minute period for all affected stacks. These measurements may be obtained

either by continuous integration of sulfur dioxide concentrations and stack gas flow rate measurements (from the respective affected facilities) recorded during the 15-minute period or from the arithmetic average of any number of sulfur dioxide concentration and stack gas flow readings equally spaced over the 15-minute period. In the latter case, the same number of concentration readings shall be taken in each 15-minute period and shall be similarly spaced within each 15-minute period.

(c) Calculate the arithmetic average (lbs SO<sub>2</sub>/hr) from all 24 emission rate measurements in each 6-hour period for each stack.

(d) Total the average sulfur dioxide emission rates for all affected stacks.

(ii) Notwithstanding the requirements of subparagraph (4) (i) of this paragraph, compliance with the requirements of subparagraph (1) of this paragraph shall also be determined by using the methods described below at such times as may be specified by the Administrator. For all stacks equipped with the measurement system(s) required by subparagraph (3) of this paragraph, a 6-hour average sulfur dioxide emission rate (lbs SO<sub>2</sub>/hr) shall be determined as follows:

(a) The test of each stack emission rate shall be conducted while the processing units vented through such stack are operating at or above the maximum rate at which such will be operated and under such other relevant conditions as the Administrator shall specify based on representative performance of the smelter units.

(b) Concentrations of sulfur dioxide in emissions shall be determined by using Method 8 as described in Part 60 of this chapter. The analytical and computational portions of Method 8 as they relate to determination of sulfuric acid mist and sulfur trioxide as well as isokinetic sampling may be omitted from the over-all test procedure.

(c) Three independent sets of measurements of sulfur dioxide concentrations and stack gas volumetric flow rates shall be conducted during three consecutive two-hour periods for each stack. Measurements need not necessarily be conducted simultaneously of emissions from all stacks on the smelter premises.

(d) In using Method 8, traversing shall be conducted according to Method 1 as described in Part 60 of this chapter. The minimum sampling volume for each 2 hour test shall be 40 ft<sup>3</sup> corrected to standard conditions, dry basis.

(e) The volumetric flow rate of the total effluent from each stack evaluated shall be determined by using Method 2 as described in Part 60 of this chapter and traversing according to Method 1. Gas analysis shall be performed by using the integrated sample technique of Method 3 as described in Part 60 of this chapter. Moisture content shall be determined by use of Method 4 as described in Part 60 of this chapter.

(f) The gas sample shall be extracted at a rate proportional to gas velocity at the sampling point.

(g) For each 2 hour test period, the sulfur dioxide emission rate for each stack shall be determined by multiplying

the stack gas volumetric flow rate (ft<sup>3</sup>/hr at standard conditions, dry basis) by the sulfur dioxide concentration (lb/ft<sup>3</sup> at standard conditions, dry basis). The emission rate in lbs/hr—maximum 6-hour average for each stack is determined by calculating the arithmetic average of the results of the three two-hour tests.

(h) The sum total of sulfur dioxide emissions from the smelter premises in lbs/hr is determined by adding together the emission rates (lbs/hr) from all stacks equipped with the measurement systems required by subparagraph (3) of this paragraph.

(iii) A violation of the requirements of subparagraph (1) shall occur whenever the total sulfur dioxide emission rate determined according to subparagraph (4) (i) or (ii) of this paragraph exceeds the sulfur dioxide emission rate specified in subparagraph (1) of this paragraph.

§ 52.2324 [Revoked]

3. Section 52.2324 is revoked.

[FR Doc.74-24360 Filed 10-17-74;8:45 am]

#### [40 CFR Part 52]

[FRL 282-7]

#### APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

##### Parking Management Regulations; Correction

FEDERAL REGISTER document 74-18903 published at page 30445 in the issue dated Thursday, August 22, 1974, is corrected to add the following:

1. In § 52.86, paragraph (b) is corrected to delete the phrase "the Fairbanks North Star Borough."

Dated: October 11, 1974.

ROGER STRELOW,  
Assistant Administrator  
for Air and Waste Management.

[FR Doc.74-24248 Filed 10-17-74;8:45 am]

#### [40 CFR Part 125]

[FRL 281-5]

#### NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

##### Processing of Permits

The Environmental Protection Agency is considering the amendment of the National Pollutant Discharge Elimination System regulations contained in 40 CFR Part 125 and promulgated pursuant to sections 402 and 405 of the Federal Water Pollution Control Act, as amended. The purpose of the regulations contained in Part 125 was described at 30 FR 1362 (January 11, 1973).

The amendments to Part 125 proposed today intend to clarify two existing §§ 125.12(h) (1) and 125.24(a). The amendment to § 125.12(h) (1) adds a reference to Short Form D. The amendment to § 125.24 eliminates the consideration of publicly owned treatment works from the currently existing paragraph (a) which is newly designated as paragraph (a) (1). New paragraph § 125.24(a) (2) applies only to publicly owned treat-

ment works and is identical to paragraph (a) (1) except that no reference is made to effluent limitations for multiproduct operations. These proposed amendments also add a new § 125.28, and a new paragraph, § 125.24(c), to the existing regulations. These proposed provisions set forth the existing policy under which the Administrator may, for the purpose of establishing the effluent limitations in any individual permit, grant credit for any pollutants found in an applicant's water supply.

The proposed rules indicate that all permits are to be issued in gross rather than net terms unless the applicable effluent limitations and standards of performance (contained in Subchapter N of 40 CFR, Chapter D) provide that they are to be applied on a net basis or unless meeting effluent limitations or standards of performance on a gross rather than net basis is of major significance to the applicant in terms of cost or technical feasibility of achieving the prescribed levels of abatement.

The proposed rules allow the Regional Administrator to deny credit for pollutants which would vary significantly from the pollutants originally existing in the applicant's water supply. The provision indicates that credit may not be given where the chemical or biological character of the pollutants discharged is significantly different from the chemical or biological character of the pollutants in the applicant's intake water even though such pollutants are measured by the same analytical technique (e.g. total suspended solids).

Interested members of the public are invited to comment on the proposed amendments to Part 125 by written submissions to the United States Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460; Office of Enforcement and General Counsel, Water Enforcement Division (EG-338). Prior to promulgation of the proposed amendments in final form, all comments received on or before December 17, 1974, will be carefully considered. All comments received may be inspected at the above location during normal working hours by interested members of the public.

In consideration of the foregoing, it is proposed to amend Part 125 of Chapter I of Title 40 of the Code of Federal Regulations as set forth below.

AUTHORITY: Secs. 402, 405, and 501 of the Federal Water Pollution Control Act Amendments of 1972 (33 U.S.C. 1342, 1345, and 1361).

JOHN QUARLES,  
Acting Administrator.

OCTOBER 10, 1974.

1. In § 125.12 paragraph (h) (1) is amended to read as follows:

§ 125.12 Application for a permit.

(h) (1) If the information submitted by an applicant for an NPDES permit in Short Form A (relating to municipal wastewater treatment facilities) or Short Form D when submitted for a

municipal-type discharge (e.g., subdivision, shopping center) or any other information available to the Regional Administrator indicates any of the following, the applicant shall be required to complete, sign and submit a Standard Form A:

(i) The discharges from the facility have a total volume of more than five million gallons on any day of the year;

(ii) The facility serves a population in excess of 10,000; or

(iii) The facility receives wastes from an industrial user and such wastes:

(A) Have a total volume of more than 50,000 gallons on any day of the year,

(B) Contain toxic pollutants,

(C) Have a total volume which constitutes more than one percent of the volume of the total discharge from the facility on any day of the year, or

(D) In combination with other discharges into the facility interfere with the operation of the facility or adversely affect the quality of the discharge from the facility.

2. Section 125.24 is revised to read as follows:

**§ 125.24 Effluent limitations in permits.**

(a) (1) In the application of effluent standards and limitations, water quality standards, and other applicable requirements, the Regional Administrator shall, for each permit, except those for publicly owned treatment works, specify average and maximum daily quantitative limitations for the level of pollutants in the authorized discharge in terms of weight (except pH, temperature, radiation, and any other pollutants not appropriately expressed by weight, and except for discharges whose constituents cannot be appropriately expressed by weight). The Regional Administrator may, in his discretion, in addition to the specification of daily quantitative limitations by weight, specify other limitations, such as average or maximum concentration limits, for the level of pollutants in the authorized discharge. Effluent limitations for multiproduct operations shall provide for appropriate waste variations from such plants. Where a schedule of compliance is included as a condition in a permit, effluent limitations shall be included for the interim period as well as for the period following the final compliance date.

(2) The Regional Administrator shall, for each permit for publicly owned treatment works, specify average quantitative limitations for the level of pollutants in the authorized discharge in terms of weight (except pH, temperature, radiation, and any other pollutants not appropriately expressed by weight, and except for discharges whose constituents cannot be appropriately expressed by weight). The Regional Administrator may, in his discretion, in addition to the specification of average quantitative limitations by weight, specify other limitations, such as average or maximum concentration limits or maximum daily quantitative limitations by weight for the level of pollutants in the authorized

discharge. Where a schedule of compliance is included as a condition in a permit, effluent limitations shall be included for the interim period as well as for the period following the final compliance date.

(b) Notwithstanding any other provision in the regulations in this part, any point source the construction of which is commenced after the date of enactment of the Federal Water Pollution Control Act Amendments of 1972 and which is so constructed as to meet all applicable standards of performance (as defined in section 306 of the Act) shall not be subject to any more stringent standard of performance during a 10-year period beginning on the date of completion of such construction or during the period of depreciation or amortization of such facility for the purposes of section 167 or section 169 (or both) of the Internal Revenue Code of 1954, whichever period ends first.

(c) Except as provided in § 125.28, effluent limitations included in permits shall be expressed in gross terms.

3. Subpart C of Part 125 is amended by adding a new § 125.28 to read as follows:

**§ 125.28 Adjustment of Effluent limitations.**

(a) The Regional Administrator shall adjust the effluent limitations in permits to reflect full credit for pollutants in the applicant's water supply if the source of the applicant's water supply is the same as the navigable water into which the discharge is made and if:

(1) The applicable effluent limitations and standards contained in Subchapter N of this Chapter specifically provide that they are to be applied on a net basis; or

(2) The applicant specifically requests that the limitations or standards be applied on a net basis, and the difference between net and gross application of the limitations or standards is of major significance to the applicant in terms of the cost or technical feasibility of achieving the prescribed levels of abatement. Partial, rather than full, credit shall be granted if, with partial credit so allowed, the abatement requirements as modified by such partial credit would not be of major significance to the applicant in terms of the cost or technical feasibility of achieving the modified levels of abatement as compared with abatement requirements on the basis of full credit. Credit may be denied if the pollutants which would be discharged, after applying full or partial credit, would vary significantly, either chemically or biologically from the pollutants found in the applicant's water supply.

(b) Any permit which includes effluent limitations adjusted pursuant to this section shall also contain a condition requiring the permittee to conduct such monitoring (i.e., flow and concentration of the pollutants therein) of the water supplied for which credits have been allowed as the Regional Administrator determines to be necessary.

(c) Credits given pursuant to paragraph (a) of this section for pollutants present in water supplies are to be cal-

culated on the basis of the level of pollutants present in such water after any water supply treatment steps performed by or for the applicant have been taken. [FR Doc.74-24251 Filed 10-17-74;8:45 am]

**[ 40 CFR Part 180 ]**

[FRL 280-3]

**CERTAIN INERT INGREDIENTS IN PESTICIDE FORMULATIONS**

**Proposed Exemptions From Requirement of Tolerance**

The Administrator of the Environmental Protection Agency has received requests to exempt certain additional inert (or occasionally active) ingredients in pesticide formulations from tolerance requirements under the provisions of section 408 of the Federal Food, Drug, and Cosmetic Act. Based on a review of the history of use and available information on the chemistry and toxicity of these substances, the Administrator finds that these substances are useful as adjuvants and when used in accordance with good agricultural practice will not result in a hazard to the public health.

Therefore, pursuant to provisions of the act (sec. 408(c), (e), 68 Stat. 512, 514; 21 U.S.C. 346a(c)(e)), it is proposed that § 180.1001 be amended by alphabetically inserting new items in paragraphs (c), (d), and (e), as follows:

**§ 180.1001 Exemption from the requirement of a tolerance.**

(c) \* \* \*

Inert Ingredients	Limits	Uses
Bacillus thuringiensis fermentation solids and/or solubles.	.....	Diluent, carrier.
Butylated hydroxyanisole.	.....	Antioxidant.
Butylated hydroxytoluene.	.....	Do.
1,2-Dihydro-6-ethoxy-2,2,4-trimethylquinoline.	Not more than 0.02 percent of pesticide formulation.	Antioxidant.
Lactose.....	.....	Solid diluent, carrier.
α-(p-Nonylphenyl) poly (oxypropylene) block polymer with poly (oxyethylene); polyoxyethylene content 20-30 moles; molecular weight averages 3,000.	.....	Surfactants, related adjuvants of surfactants.
Propyl gallate.....	.....	Antioxidant.
Soy protein, isolated.	.....	Adhesive.

(d) \* \* \*

Inert ingredients	Limits	Uses
*** Calcium chloride	***	*** Stabilizer.
Ferric chloride	Not more than 2 percent of pesticide formulation.	Suspending, dispersing agent.
*** Graphite	***	*** Treatment aid for seeds.
*** Isobutyl alcohol	***	Solvent.
Maleic anhydride copolymer with methylviny ether.	Not more than 3 percent of pesticide formulations.	Suspending and dispersing agent.
*** Polyethylene glycol (mean molecular weight 200-2,500).	***	Solvent, deactivator.
Sodium salt of the insoluble fraction of rosin.	***	*** Surfactants, related adjuvants of surfactants.

(e) \* \* \*

Inert ingredients	Limits	Uses
*** Butylated hydroxyanisole.	***	*** Antioxidant.
Butylated hydroxytoluene.	***	Do.
α-(p-Nonylphenyl) poly (oxypropylene) block polymer with poly (oxyethylene); poly oxyethylene content 30-90 moles; molecular weight averages 3,000.	***	*** Surfactants, related adjuvants of surfactants.
*** Propyl gallate.	***	*** Antioxidant.
Soy protein, isolated.	***	Adhesive.

Any person who has registered or submitted an application for the registration of a pesticide under the Federal Insecticide, Fungicide, and Rodenticide Act containing any of the ingredients listed herein may request, on or before November 18, 1974, that this proposal be referred to an advisory committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments with reference to this notice to the Federal Register Section, Technical Services Division (WH-569), Office of Pesticide Programs, Environmental Protection Agency, Room 421, East Tower, 401 H Street, SW.,

Washington, D.C. 20460. Three copies of the comments should be submitted to facilitate the work of the Environmental Protection Agency and others interested in inspecting the documents. The comments must be received on or before November 18, 1974, and should bear a notation indicating the subject. All written comments filed pursuant to this notice will be available for public inspection in the office of the Federal Register Section from 8:30 a.m. to 4 p.m. Monday through Friday.

Dated: October 5, 1974.

JOHN B. RITCH, Jr.,  
Director,  
Registration Division.

[FR Doc.74-24082 Filed 10-17-74;8:45 am]

## FEDERAL TRADE COMMISSION

[ 16 CFR Part 439 ]

## FLAMMABILITY OF PLASTICS

## Change of Date of Public Hearing and Extension of Time for Submitting Data, Views or Arguments

Notice of public hearing and the opportunity to submit data, views or arguments regarding the proposed Trade Regulation Rule Concerning Disclosure Requirements and Prohibitions Concerning the Flammability of Plastics was published in the FEDERAL REGISTER on August 6, 1974 (39 FR 28292). The Notice also set forth the text of the specific proposal about which comment was requested.

In response to appeals from interested parties for more time to prepare statements to be made at the public hearing and to submit written data, views or arguments, the Commission has postponed the public hearing date until January 13, 1975, and the closing date for receiving such comments until December 10, 1974.

Accordingly, all interested person desiring to orally present data, views or arguments with respect to the proposed Rule are hereby notified that a public hearing will be held commencing on January 13, 1975, at 10 a.m., e.d.t., in Room 532 of the Federal Trade Commission Building, Sixth Street and Pennsylvania Avenue NW., Washington, D.C. 20580.

Any person desiring to orally present his views at the hearing should so inform the Special Assistant Director for Rule-making, Bureau of Consumer Protection,

Federal Trade Commission, Washington, D.C. 20580, not later than January 6, 1975, and state the estimated time required for his oral presentation. Reasonable limitations upon the number of oral presentations or upon the length of time allotted to any person may be imposed. In addition, all parties desiring to deliver a prepared statement at the hearing should file a copy of such statement with the Special Assistant Director for Rulemaking on or before January 6, 1975. To the extent practicable, persons wishing to file written presentations in excess of two pages should submit twenty copies.

Written comments also should be submitted to the Special Assistant Director for Rulemaking no later than December 10, 1974.

Copies of the proposed Rule may be had upon request to the Federal Trade Commission.

Issued: October 16, 1974.

By the Commission.

[SEAL] CHARLES A. TOBIN,  
Secretary.

[FR Doc.74-24399 Filed 10-17-74;8:45 am]

FEDERAL ENERGY  
ADMINISTRATION

[ 10 CFR Part 217 ]

## PRIORITY DELIVERY OF COAL UNDER DEPARTMENT OF DEFENSE CONTRACT

## Cancellation of Public Hearing

The Federal Energy Administration ("FEA") hereby gives notice that the public hearing scheduled for October 22 and 23, 1974 in the above captioned proceeding has been cancelled. No requests to present oral presentations were received by FEA as of 4:30 p.m., e.d.s.t. October 16, 1974. Written comments and other data with respect to the proposed regulations may still be submitted to Executive Communications, Room 3309, Federal Energy Administration, Box BD, Washington, D.C., 20461. All such materials received by 4:30 p.m., October 21, 1974 will be considered by FEA before final action is taken on the proposed regulations.

ROBERT E. MONTGOMERY, Jr.,  
General Counsel.

OCTOBER 17, 1974.

[FR Doc.74-24539 Filed 10-17-74;11:30 am]

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in any such respect shall be final. Subject to these reservations, noncompetitive tenders for \$500,000 or less without stated yield from any one bidder will be accepted in full at the average price (in three decimals) of accepted competitive tenders.

4. All bidders are required to agree not to purchase or sell, or to make any agreements with respect to the purchase or sale or other disposition of any notes of this issue at a specific rate or price, until after 1:30 p.m., e.d.s.t., Wednesday, October 23, 1974.

5. Commercial banks in submitting tenders will be required to certify that they have no beneficial interest in any of the tenders they enter for the account of their customers, and that their customers have no beneficial interest in the banks' tenders for their own account.

IV. *Payment.* 1. Settlement for accepted tenders in accordance with the bids must be made or completed on or before Wednesday, November 6, 1974, at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt. Payment must be in cash, in other funds immediately available to the Treasury by November 6, or by check drawn to the order of the Federal Reserve Bank to which the tender is submitted, or the United States Treasury if the tender is submitted to it, which must be received at such bank or at the Treasury no later than: (1) Friday, November 1, 1974, if the check is drawn on a bank in the Federal Reserve District of the Bank to which the check is submitted, or the Fifth Federal Reserve District in case of the Treasury, or (2) Wednesday, October 30, 1974, if the check is drawn on a bank in another district. Checks received after the dates set forth in the preceding sentence will not be accepted unless they are payable at a Federal Reserve Bank. Where full payment is not completed on time, the allotment will be canceled and the deposit with the tender up to 5 percent of the amount of notes allotted will be subject to forfeiture to the United States. Payments may not be made through Tax and Loan Accounts. Payment will not be deemed to have been completed where registered notes are requested if the appropriate identifying number as required on tax returns and other documents submitted to the Internal Revenue Service (an individual's social security number or an employer identification number) is not furnished.

V. *General provisions.* 1. As fiscal agents of the United States, Federal Reserve Banks are authorized and requested to receive tenders, to make such allotments as may be prescribed by the Secretary of the Treasury, to issue such notices as may be necessary, to receive payment for and make delivery of notes on full-paid tenders allotted, and they may issue interim receipts pending delivery of the definitive notes.

2. The Secretary of the Treasury may at any time, or from time to time, prescribe supplemental or amendatory rules and regulations governing the offering,

which will be communicated promptly to the Federal Reserve Banks.

[SEAL] STEPHEN S. GARDNER,  
*Acting Secretary  
of the Treasury.*

[FR Doc.74-24440 Filed 10-16-74;2:47 pm]

## DEPARTMENT OF DEFENSE

### Department of the Air Force AIR FORCE ACADEMY BOARD OF VISITORS

#### Notice of Meeting

OCTOBER 11, 1974.

The Air Force Board of Visitors will meet at the Air Force Academy, Colorado Springs, Colorado, during the period November 14-17, 1974. The purpose of this meeting is to fulfill the requirement of 10 U.S.C. section 9355(d) that the Board meet at the Academy annually to inquire into matters of morale, discipline, the curriculum, instruction, physical equipment, and fiscal affairs, academic matters, and other matters relating to the Academy which the Board decides to consider. The meeting will be open for public attendance only on November 15, 1974 from 8:45 a.m. to 10:30 a.m. in the Academy Superintendent's Conference Room, Harmon Hall. Among the topics on the tentative agenda during the open portion of the meeting are: The Class of 1978, Cadet Training, the Academy Airstrip and Community Relations. The remainder of the meeting will pertain to internal Academy policies, procedures, and personnel matters and will be held in closed session. If additional information is desired, contact Hq USAF (DPPA), Washington, D.C. 20330, telephone number 202-697-7116.

WALTER G. FENERTY,  
*Acting Chief, Legislative Division,  
Office of The Judge Advocate General.*

[FR Doc.74-24272 Filed 10-17-74;8:45 am]

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management DILLON DISTRICT ADVISORY BOARD Notice of Meetings

Notice is hereby given that meetings of the Dillon District Advisory Board will be held on November 19, 1974, and December 17, 1974, at 9 a.m., at the Conference Room, Dillon District Office, Ihey Building, Dillon, Montana.

The agenda for the initial meeting will include making recommendations on applications for grazing privileges for the 1975 grazing year, transfers of grazing privileges, progress in claiming horses under the Wild Horse and Burro Act, and the Federal Advisory Committee Act of October 6, 1972.

The agenda for the second meeting will include hearing of protests on any action determined or considered adverse during the initial meeting, reports of district programs, planning system progress and the Federal Advisory Committee Act of October 6, 1972.

The meetings will be open to the public as space is available. Time will be available for a limited number of brief statements by members of the public. Written statements may be filed with the Board for consideration. Written statements should be submitted to District Advisory Board Chairman, c/o District Manager, Bureau of Land Management, P.O. Box 1048, Dillon, Montana 59725.

JACK A. MCINTOSH,  
*District Manager.*

OCTOBER 10, 1974.

[FR Doc.74-24325 Filed 10-17-74;8:45 am]

## DEVELOPMENT OF COAL RESOURCES IN THE EASTERN POWDER RIVER COAL BASIN OF WYOMING

### Availability of Final Environmental Statement

Pursuant to the section 102(2)(C) of the National Environmental Policy Act, the Department of the Interior has prepared a final environmental statement for the proposed development of coal resources in the Eastern Powder River Coal Basin of Wyoming.

The environmental statement describes the proposed development of coal resources in Campbell and Converse Counties, Wyoming, and construction of a 113-mile railroad line to serve the proposed coal developments. The statement examines cumulative impacts from a regional viewpoint as well as impacts resulting from the development of four specific mine sites and construction of the railroad.

Copies are available for inspection at the following locations:

State Planning Coordinator, Office of the Governor, State Capitol Building, Cheyenne, Wyoming 82001.  
Bureau of Land Management, Department of the Interior, 18th and C Streets, NW., Rm. 3648, Washington, D.C. 20240.  
United States Forest Service, Room 4231, South Building, Department of Agriculture, 14th & Independence Ave., SW., Washington, D.C. 20250.  
United States Geological Survey, Public Inquiries Office, Rm. 1028, General Services Admin. Bldg., 19th & F Streets, NW., Washington, D.C. 22042.  
Bureau of Land Management, Denver Service Center, Rm. 1125, Denver Federal Center, Building 50, Denver, CO 80225.  
Interstate Commerce Commission, 12th & Constitution Ave., NW., Washington, D.C. 20423.  
Bureau of Land Management, Wyoming State Office, Public Affairs, 5th Floor, 2120 Capitol Ave., P.O. Box 1828, Cheyenne, WY 82001.  
Bureau of Land Management, Casper District Office, 100 East "B" Street, P.O. Box 2834, Casper, WY 82601.  
U.S. Forest Service, Supervisor's Office, 605 Skyline Drive, Laramie, WY 82070.  
Bureau of Land Management, Buffalo Resource Area, P.O. Box 979, Buffalo, WY 82834.  
U.S. Forest Service, District Ranger, Thunder Basin National Grassland, P.O. Box 129, Douglas, WY 82633.  
Public Inquiries, U.S.G.S., Room 1C402, 12201 Sunrise Valley Dr., Reston, VA 22092.

Copies may be obtained by writing the Bureau of Land Management, Wyoming State Office, Office of Public Affairs, 5th Floor, 2120 Capitol Avenue, P.O. Box 1828, Cheyenne, WY 82001.

Dated: October 16, 1974.

ROYSTON C. HUGHES,  
Assistant Secretary  
of the Interior.

[FR Doc.74-24425 Filed 10-17-74;8:45 am]

[Serial No. I-7435]

#### IDAHO

##### Partial Termination of Proposed Withdrawal and Reservation of Lands

OCTOBER 9, 1974.

Notice of an application Serial No. I-7435, for withdrawal and reservation of lands was published as FR Doc. No. 74-2518 on page 3977 of the issue for Thursday, January 31, 1974. The Atomic Energy Commission has canceled its application insofar as it involved the lands described below. Therefore, pursuant to the regulations contained in 43 CFR Part 2300, such lands will be at 10:00 a.m. on November 13, 1974 relieved of the segregative effect of the above-mentioned application.

The lands involved in this notice of termination are:

#### BOISE MERIDIAN, IDAHO

- T. 13 S., R. 25 E.,  
Secs. 25, 26, 35 and 36;
- T. 13 S., R. 26 E.,  
Secs. 25, 26, 27, 28, 29, 30, 31, 32, 33 and 34;
- T. 13 S., R. 27 E.,  
Sec. 30;
- T. 14 S., R. 25 E.,  
Secs. 1, 2, 11, 12, 13 and 14;
- T. 14 S., R. 26 E.,  
Secs. 3, 4, 5, 6, 7, 8, 9, 10, 15, 16, 17 and 18;
- T. 16 S., R. 26 E.,  
Sec. 24;
- T. 16 S., R. 27 E.,  
Secs. 18 and 19.

The areas described aggregate 17,792.58 acres.

WILLIAM E. IRELAND,  
Acting Chief,  
Branch of L&M Operations.

[FR Doc.74-24321 Filed 10-17-74;8:45 am]

[Montana 30114]

#### MONTANA

##### Order Providing for Opening of Public Lands

OCTOBER 9, 1974.

In an exchange made under the provisions of section 8 of the Act of June 28, 1934, as amended, 43 U.S.C. 315g, the following described lands have been reconveyed to the United States:

#### PRINCIPAL MERIDIAN, MONTANA

- T. 5 N., R. 30 E.,  
Sec. 34, E $\frac{1}{2}$ SE $\frac{1}{4}$ , S $\frac{1}{2}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ , and  
S $\frac{1}{2}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ .

The area described contains 105 acres.

The reconveyed lands are in Yellowstone County, Montana, approximately 10 miles north of Pompeys Pillar. This

land includes Castle Butte, a significant landmark. This land has legal access by means of a county road along the east side of the tract.

The highest and best use of the land would be for recreational and aesthetic pursuits and protective development of existing archaeological sites.

At 10 a.m. on November 22, 1974, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law, the lands will be open to the operation of the public land laws.

The mineral rights in the lands were not exchanged; therefore, the mineral status of the lands is not affected by this order.

Inquiries concerning the land should be addressed to the Chief, Branch of Lands and Minerals Operations, Bureau of Land Management, 316 North 26th Street, Billings, Montana 59101.

ROLAND F. LEE,  
Chief, Branch of Lands and  
Minerals Operations.

[FR Doc.74-24324 Filed 10-17-74;8:45 am]

[N-6986, etc.]

#### NEVADA

##### Order Opening Public Lands; Correction

OCTOBER 9, 1974.

In FR Doc. 74-22952 appearing on page 35690 of the issue for Thursday, October 3, 1974, the date cited for the end of the simultaneous filing period is corrected to read: October 30, 1974.

WILLIAM J. MALENCIK,  
Chief,  
Division of Technical Services.

[FR Doc.74-24301 Filed 10-17-74;8:45 am]

[NM 23189]

#### NEW MEXICO

##### Notice of Application

OCTOBER 8, 1974.

Notice is hereby given that, pursuant to section 28 of the Mineral Leasing Act of 1920 (30 U.S.C. 185), as amended by the Act of November 16, 1973 (87 Stat. 576), El Paso Natural Gas Company has applied for a 4 $\frac{1}{2}$  inch natural gas pipeline right-of-way across the following lands:

#### NEW MEXICO PRINCIPAL MERIDIAN, New Mexico

- T. 23 S., R. 30 E.,  
Sec. 24, S $\frac{1}{2}$ NW $\frac{1}{4}$ , NE $\frac{1}{4}$ SW $\frac{1}{4}$ , N $\frac{1}{2}$ SE $\frac{1}{4}$  and  
SE $\frac{1}{4}$ SE $\frac{1}{4}$ .
- T. 23 S., R. 31 E.,  
Sec. 19, Lot 4, SE $\frac{1}{4}$ SW $\frac{1}{4}$ ;  
Sec. 29, S $\frac{1}{2}$ NW $\frac{1}{4}$ , N $\frac{1}{2}$ SW $\frac{1}{4}$  and NW $\frac{1}{4}$ SE $\frac{1}{4}$ ;  
Sec. 30, N $\frac{1}{2}$ NE $\frac{1}{4}$ , SE $\frac{1}{4}$ NE $\frac{1}{4}$  and NE $\frac{1}{4}$ -  
NW $\frac{1}{4}$ .

This pipeline will convey natural gas across 2.893 miles of national resource lands in Eddy County, New Mexico.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether

the application should be approved, and if so, under what terms and conditions.

Interested persons desiring to express their views should promptly send their name and address to the District Manager, Bureau of Land Management, P.O. Box 1397, Roswell, NM 88201.

FRED E. PADILLA,  
Chief, Branch of Lands  
and Minerals Operations.

[FR Doc.74-24296 Filed 10-17-74;8:45 am]

[NM 23188, 23343]

#### NEW MEXICO

##### Notice of Applications

OCTOBER 10, 1974.

Notice is hereby given that pursuant to section 28 of the Mineral Leasing Act of 1920 (30 U.S.C. 185), as amended by the Act of November 16, 1973 (87 Stat. 576), El Paso Natural Gas Company has applied for two 4 $\frac{1}{2}$ -inch natural gas pipelines rights-of-way across the following lands:

#### NEW MEXICO PRINCIPAL MERIDIAN, NEW MEXICO

- T. 21 S., R. 26 E.,  
Sec. 4, Lot 14, E $\frac{1}{2}$ SW $\frac{1}{4}$ .
- T. 20 S., R. 28 E.,  
Sec. 1, Lot 4.

These pipelines will convey natural gas across .756 miles of national resource lands in Eddy County, New Mexico.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the applications should be approved, and if so, under what terms and conditions.

Interested persons desiring to express their views should promptly send their name and address to the District Manager, Bureau of Land Management, P.O. Box 1397, Roswell, New Mexico 88201.

FRED E. PADILLA,  
Chief, Branch of Lands  
and Minerals Operations.

[FR Doc.74-24297 Filed 10-17-74;8:45 am]

[NM 23323, 23327, 23330, 23331 and 23333]

#### NEW MEXICO

##### Notice of Applications

OCTOBER 10, 1974.

Notice is hereby given that, pursuant to section 28 of the Mineral Leasing Act of 1920 (30 U.S.C. 185), as amended by the Act of November 16, 1973 (87 Stat. 576), El Paso Natural Gas Company has applied for four 4 $\frac{1}{2}$  inch and one 2 $\frac{1}{2}$  inch natural gas pipelines rights-of-way across the following lands:

#### NEW MEXICO PRINCIPAL MERIDIAN, NEW MEXICO

- T. 26 N., R. 9 W.,  
Sec. 26, SE $\frac{1}{4}$ SW $\frac{1}{4}$  and W $\frac{1}{2}$ SE $\frac{1}{4}$ ;  
Sec. 33, NE $\frac{1}{4}$ NE $\frac{1}{4}$  and S $\frac{1}{2}$ NE $\frac{1}{4}$ ;  
Sec. 34, NW $\frac{1}{4}$ NW $\frac{1}{4}$ ;  
Sec. 35, N $\frac{1}{2}$ NW $\frac{1}{4}$ .
- T. 28 N., R. 9 W.,  
Sec. 26, SE $\frac{1}{4}$ NE $\frac{1}{4}$  and S $\frac{1}{2}$ NW $\frac{1}{4}$ ;  
Sec. 28, NW $\frac{1}{4}$ SW $\frac{1}{4}$ .

These pipelines will convey natural gas across 1.239 miles of national resource lands in San Juan County, New Mexico.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the applications should be approved, and if so, under what terms and conditions.

Interested persons desiring to express their views should promptly send their name and address to the District Manager, Bureau of Land Management, 3550 Pan American Freeway, Albuquerque, NM 87107.

FRED E. PADILLA,  
Chief, Branch of Lands  
and Minerals Operations.

[FR Doc.74-24298 Filed 10-17-74; 8:45 am]

[NM 23322, 23324, 23328 and 23329]

#### NEW MEXICO Notice of Applications

OCTOBER 8, 1974.

Notice is hereby given that, pursuant to section 28 of the Mineral Leasing Act of 1920 (30 U.S.C. 185), as amended by the Act of November 16, 1973 (87 Stat. 576), El Paso Natural Gas Company has applied for four 4½ inch natural gas pipelines rights-of-way across the following lands:

NEW MEXICO PRINCIPAL MERIDIAN, NEW MEXICO  
T. 28 N., R. 8 W.,  
Sec. 28, NW¼NW¼;  
Sec. 32, Lot 2, W¼NW¼ and NE¼SW¼;  
Sec. 35, N¼NW¼ and SW¼NW¼.

These pipelines will convey natural gas across 573 miles of national resource lands in San Juan County, New Mexico.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the application should be approved, and if so, under what terms and conditions.

Interested persons desiring to express their views should promptly send their name and address to the District Manager, Bureau of Land Management, 3550 Pan American Freeway, Albuquerque, NM 87107.

FRED E. PADILLA,  
Chief, Branch of Lands  
and Minerals Operations.

[FR Doc.74-24300 Filed 10-17-74; 8:45 am]

#### RAWLINS DISTRICT ADVISORY BOARD Notice of Meeting

OCTOBER 11, 1974.

Notice is hereby given that the Rawlins District Advisory Board will meet at 9:00 a.m., November 14, 1974, in the Conference Room of the Bureau of Land Management Building, Rawlins, Wyoming. The agenda will include consideration of 1975 grazing applications, a report on the State Advisory Board Meeting, a report on the Seven-Lakes Planning Unit, grazing use in West Rendle Allotment, a report on the policy on yearling conversions, consideration of the Federal Advisory Committee Act, and a report on new branding regulations.

The meeting will be open to the public as space is available. Time will be avail-

able for a limited number of brief statements by members of the public. Those wishing to make an oral statement should inform the Advisory Board Chairman prior to the meeting of the Board. Any interested person may file a written statement with the Board for its consideration.

Written statements and requests to appear before the Board should be submitted to Curtis Rochelle, Chairman, % District Manager, Bureau of Land Management, Rawlins, Wyoming 82301.

FRED WOLF,  
District Manager.

[FR Doc.74-24278 Filed 10-17-74; 8:45 am]

#### VALE DISTRICT ADVISORY BOARD Notice of Meeting

Notice is hereby given that the Vale District Advisory Board will hold meetings on November 8, 1974 and December 19, 1974 at 9:00 a.m. The meeting will be held at the Vale District Office conference room, 365 A Street, West, Vale, Oregon.

Agenda for the initial meeting will include: (1) Review of wild free roaming horse management; (2) discussion of proposed rule making; (3) proposed board changes conforming with the Federal Advisory Committee Act of 1972; (4) update on geothermal exploration activity within the district; (5) review and recommendations concerning grazing privileges on National Resource Lands for the 1975 grazing season, transfers of base property and privileges, and cooperative agreements.

The agenda for the second meeting will include: (1) Hearing protests on proposed allocation of grazing privileges; (2) reports on district programs including range, watershed, lands, minerals, wildlife, recreation, and proposed plans for the following fiscal year; (3) briefing on proposed board changes; (4) discussion on proposed rule making.

The meetings will be open to the public as space allows. Time will be available for a limited number of brief statements by members of the public. Those wishing to make an oral statement should inform the Advisory Board Chairman prior to the meeting of the Board. Any interested person may file a written statement for consideration by the Board. Send written statements to the Chairman, in care of the Co-chairman, Vale District Manager, P.O. Box 700, Vale, Oregon 97918.

GEORGE R. GUNN,  
District Manager.

OCTOBER 9, 1974.

[FR Doc.74-24323 Filed 10-17-74; 8:45 am]

#### WORLAND DISTRICT ADVISORY BOARD Notice of Meeting

OCTOBER 10, 1974.

Notice is hereby given in accordance with Public Law 92-463 that a meeting of the Worland District Advisory Board will be held on November 13, 1974, at

9:30 a.m., at the Worland District Office of the Bureau of Land Management, 1700 Robertson Avenue, Worland, Wyoming.

The committee was established to advise and make recommendations concerning rules and regulations for the administration of the Taylor Grazing Act. It also makes recommendations on all matters affected by the Act.

The purpose of the meeting is to consider 1975 grazing applications, dependent property production surveys and grazing transfers.

The meeting is open to the public. It is expected that 15 persons will be able to attend the session in addition to the committee members. Interested persons may make oral presentations to the committee or file written statements. Such requests should be made to the official listed below at least 10 days prior to the meeting.

Further information concerning this meeting may be obtained from John Rankine, Chairman of the Worland District Advisory Board, c/o District Manager, P.O. Box 119, Worland, Wyoming 82401.

Minutes of the meeting will be available for public inspection and copying two weeks after the meeting at the Worland District Office, 1700 Robertson Avenue, Worland, Wyoming.

RICHARD E. CLEVELAND,  
District Manager.

[FR Doc.74-24322 Filed 10-17-74; 8:45 am]

[Wyoming 47833]

#### WYOMING Notice of Application

OCTOBER 8, 1974.

Notice is hereby given that pursuant to Section 28 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 185), the Kansas-Nebraska Natural Gas Company has applied for a natural gas pipeline right-of-way across the following lands:

SIXTH PRINCIPAL MERIDIAN, WYOMING

T. 39 N., R. 90 W.,  
Sec. 31, lots 1, 2, and 3.  
T. 38 N., R. 91 W.,  
Sec. 1, lot 2.

The pipeline will convey natural gas from the Govt. Madden Unit #12 well in in the NW¼, sec. 31, T. 39 N., R. 90 W., to an existing pipeline in the NW¼, sec. 1, T. 38 N., R. 91 W.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the application should be approved and, if so, under what terms and conditions.

Interested persons desiring to express their views should send their name and address to the District Manager, Bureau of Land Management, P.O. Box. 670, Rawlins, Wyoming 82301.

PHILIP C. HAMILTON,  
Chief, Branch of Lands and  
Minerals Operations.

[FR Doc.74-24277 Filed 10-17-74; 8:45 am]

[DES 74-]

**OUTER CONTINENTAL SHELF OIL AND GAS LEASING****Availability of Draft Environmental Impact Statement and Public Hearing Regarding Proposed Increase to Ten Million Acres**

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Department of the Interior has prepared a draft environmental impact statement relating to a proposed increase to ten million acres for oil and gas leasing on the Outer Continental Shelf.

Single copies of the draft environmental statement can be obtained from the following offices:

Atlantic Outer Continental Shelf Office  
90 Church Street  
New York, New York 10007  
Manager,  
Alaska Outer Continental Shelf Office  
Box 1166  
Anchorage, Alaska 99510  
Manager, Gulf of Mexico Outer  
Continental Shelf Office  
Suite 3200  
The Plaza Tower  
1001 Howard Avenue  
New Orleans, Louisiana 70113  
Manager, Pacific Outer Continental  
Shelf Office  
7663 Federal Building  
300 North Los Angeles Street  
Los Angeles, California 90012

Single copies may also be obtained from the Office of Public Affairs, Bureau of Land Management (130), Washington, D.C. 20240.

In accordance with 43 CFR 3301.4, public hearings will be held for the purpose of receiving comments and suggestions relating to the proposal. The hearings will be held in Los Angeles, California, Anchorage, Alaska and Trenton, New Jersey during the week beginning Monday, November 18, 1974. The exact times and dates of these hearings will be announced at a future date.

The hearings will provide the Secretary with additional information from both the public and private sectors to help evaluate fully the potential effects of the possible acceleration of leasing on the total environment, aquatic resources, aesthetics, recreation and other resources in all areas that could be affected during the exploration, development, and operation phases of the leasing program.

The hearings will also provide the Secretary, under Section 102(2)(C) of the National Environmental Policy Act of 1969, with the opportunity to receive additional comments and views of interested State and local agencies.

Interested individuals, representatives of organizations and public officials wishing to testify at the hearings are requested to contact the Director (732), Bureau of Land Management, U.S. Department of the Interior, Washington, D.C. 20240 by 4:15 p.m. e.s.t., November 8, 1974. They should specifically indicate in which of the above three cities they would like to testify.

Written comments from those unable to attend the hearings should be ad-

mitted to the Director (Attn: 732), Bureau of Land Management, U.S. Department of the Interior, Washington, D.C. 20240. The Department will accept written testimony and comments on the draft environmental statement until December 15, 1974. This should allow ample time for those unable to testify at the hearings to make their views known and for the submission of supplemental materials by those presenting oral testimony. Time limitations make it necessary to limit the length of oral presentations to ten minutes. An oral statement may be supplemented, however, by a more complete written statement which may be submitted to the hearing officer at the time of presentation of the oral statement. Written statements presented in person at the hearings will be considered for inclusion in the hearing record. To the extent that time is available after presentations of oral statements by those who have given advance notice, the hearing officer will give others present an opportunity to be heard.

After all testimony and comments have been received and analyzed a final environmental statement will be prepared.

CURT BERKLUND,

Director,

Bureau of Land Management.

Approved: October 17, 1974.

JOHN C. WHITAKER,

Under Secretary of the Interior.

[FR Doc. 74-24538 Filed 10-17-74; 11:10 am]

**Fish and Wildlife Service  
ENDANGERED SPECIES PERMIT  
Receipt of Application**

Notice is hereby given that the following application for a permit is deemed to have been received under section 10 of the Endangered Species Act of 1973 (Pub. L. 93-205).

**Applicant:** Howard W. Campbell, Ph.D., Zoologist, National Fish and Wildlife Laboratory, 2820 East University Avenue, Gainesville, Florida 32601.

1. Application to the Director, U.S. Fish and Wildlife Service, for a permit to take an endangered species.

2. Endangered Species to be taken: American alligator, *Alligator mississippiensis*.

3. Desired effective date: 1 November, 1974 or as soon as possible.

4. Applicant: Howard W. Campbell, Ph.D., Zoologist, National Fish and Wildlife Laboratory, 2820 East University Avenue, Gainesville, Florida 32601, Phone: 904-372-2571 (or 2572).

5. Description of applicant (See also attached curriculum vitae):

a. Date of birth: 23 October 1935.

b. Height: 6 feet 2 inches.

c. Weight: 160 pounds.

d. Color of hair: blond.

e. Color of eyes: blue.

f. Sex: male.

g. Institutional affiliation: U.S. Fish and Wildlife Service, National Fish and Wildlife Laboratory, 2820 E. University Avenue, Gainesville, Florida 32601, Dr. Lynn Greenwalt, Director.

h. Cooperating organization: Florida State Museum, Department of Natural Sciences,

University of Florida, Gainesville, Florida 32605, Dr. J. C. Dickinson, Director, and: Florida Department of Game and Fresh Water Fish, 620 S. Meridian St. S., Tallahassee, Florida 32304, Dr. O. Earl Fry, Jr., Director.

6. Location of permitted activity: Southeastern United States, to include the States of South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Texas, Arkansas. Principal efforts will center in the State of Florida.

7. Additional information.

a. The purpose of taking dead alligators will be twofold:

(1) To obtain information on the ecology and mortality factors of the species, as detailed under d. below and:

(2) to salvage and store accidentally killed individuals to obtain specimens and parts for later use for educational and scientific purposes.

The animals will be taken within the State of Florida whenever they become available and from other portions of the species' range as opportunity permits. Only dead animals will be taken and no attempt will be made to take live animals.

b. Description of endangered species to be taken:

(1) American alligator, *Alligator mississippiensis*.

(2) Size of stock: unknown.

(3) Number to be taken; as many dead animals as become available.

(4) Age, size, and sex of animals: unknown.

(5) Condition of animals: dead animals only.

c. Transportation and maintenance:

Since this is a request for a permit to take dead animals, no special transportation and maintenance facilities are required.

d. Scientific Research Project:

Data on the ecology and mortality factors for the American alligator are sparse and primarily centered on localized populations in southern Louisiana, southeastern Georgia, and south Florida. These populations are chiefly located in extensive fresh and brackish water marshes. There are few data on the ecological characteristics of populations in other sectors of the species' range or on populations which inhabit the many streams, rivers, or lakes in any sector of the species' range.

The purpose of this proposed research is to accumulate as much data as possible on these poorly known populations through the examination of specimens which are accidentally lost to the population. This approach will permit the accumulation of valuable comparative ecological and population data without the necessity of sacrificing live animals from already depressed populations.

Data of the following types will be recorded for each animal as the animal's condition permits: size, including body and tail length and weight, sex, estimated age, cause of death, general health condition prior to death if determinable, evidence of previous injury or disease, stomach contents, reproductive condition, types and location of parasites, both external and internal, if any, and the general nature of the habitat from which the animal was removed. Tissue samples will be obtained for pesticide residue analysis and a standard set of morphological measurements will be taken for an ongoing analysis of geographic variation in the species (Appendix A).

Following examination, specimens will be prepared for storage by the most appropriate method available. Small fresh individuals will be preserved in formalin for wet storage, all others will be prepared for dry storage as skeletal preparations and cured skins suitable for taxidermy or scientific study when the condition of the specimen permits. All

AUGUST 26, 1974.

FISH AND WILDLIFE SERVICE,  
Department of the Interior,  
Washington, D.C. 20240.

DEAR SRS: In compliance with the terms of Title 50 of the Code of Federal Regulations, revised January, 1974, the following application is made to import scientific specimens:

**Applicant.** Ralph M. Wetzel, Ph.D., Systematic and Evolutionary Biology, U-43, University of Connecticut, Storrs, Conn. 06268. Tel.: 486-4456. Home: (203) 429-8584.

**Personal Data.** Born 30 June, 1917, Macomb, Illinois, 6 ft., 160 lbs., brown hair with gray, brown eyes, male. Institutional affiliation: University of Connecticut—Professor of Biology and Curator of Mammals.

**President of Institution.** Glenn W. Ferguson, U-48, University of Connecticut, Storrs, Conn. 06268.

**Location where the permitted activity is to be conducted.** Specimens to be shipped from Asuncion, Paraguay, to applicant, Bradley Field, Hartford, Connecticut, and there to be picked up by applicant after clearance by U.S. Customs and taken to the University of Connecticut. At the latter site the specimens will be installed in the collection of the Museum of Natural History of that institution and made part of the research collection from Paraguay.

**Type of permit requested.** As listed in Paragraph (b), § 13.12, of Part 13, of Title 50: 1723—Zoological, educational, scientific.

**Data on specimens to be covered by permit.** Old, dead (i.e. picked up from ground) weathered skulls of the following collected in Paraguay:

6 skulls of the "Brazilian" tapir, *Tapirus terrestris* (Linnaeus), sex unknown, age at death unknown, length of time between death and collection, unknown, except weathering suggests 6 months to 2 years.

2 skulls of the ocelot, *Leo onca* (Linnaeus) (= *Panthera onca* or *Felis onca*), sex unknown, age at death unknown, length of time between death and collection unknown, except that history of the two skulls suggests 5 years for one skull and 6 months for the other skull.

**Contract with the importer.** Inclosed. Mr. Estanislao Arce H. Edificio Astral, Montevideo Esq. Palma, Oficina 209, Asuncion, Paraguay. Contract is to obtain any necessary permits required by Paraguay, package, and ship to applicant.

**Justification for the permit.** Specimens are needed—(a) for sub-specific determination of these species in Paraguay, a country that is ill represented in the systematic collections of the World (inventoried by the applicant over the course of 8 years, while at the Smithsonian Institution and at the University of Connecticut, by study in the 45 major museums of South America, Europe, and North America). No comprehensive review of either species has been made over the range of either species, south of Colombia. (b) As voucher specimens for the applicants continuing study of the mammals of the Chaco of Paraguay, as specific geographical data was obtained for each skull. (c) As valuable additions to the systematic collections of the World for two species not adequately represented from their entire range and species that are so on the wane that they have been classified as rare and endangered.

The justification for importing specimens of these rare and endangered species, whatever the scientific need, is that—no money was paid for these skulls, hence no market for skulls of either jaguar or tapir was established by their collection and there is not adequate repository for these skulls in the country of origin. The small museum in Para-

guay is a one-man effort of taxidermy mounts, with poor prospects of continuation after the impending retirement or death of the old curator. In short, here are specimens of potential scientific value, if properly curated and available to the scientific community, that would have been destroyed by weathering if the applicant had not picked them up from the ground.

**Description of institution at which specimens will be on deposit.** The Museum of Natural History, The University of Connecticut, Storrs, Conn. 06268, currently has 18,000 specimens of mammals. These specimens are catalogued, kept in insect proof cases, in rooms locked from the general public, and under supervision of a full time staff. Although the collection is a relatively young one and only slowly coming to the attention of the systematic mammalogists, it has been and will continue to be available to workers at other institutions with revisional or zoogeographic studies. Although the best series are for species of mammals from northeastern North America, there are ones from India, Ecuador, and Paraguay. For the latter country, due to the applicant's field research, our museum has one of the more significant collections in the World. The future of this collection will depend, of course, on continued institutional support and expansion of space. Certain of the Paraguayan specimens will, eventually be deposited in the National Museum of Natural History, Smithsonian Institution, after they have been studied. Until the latter has occurred, no precise statement of this division can be attempted.

**Status of specimens to be imported at time of application.** Dead, i.e. skulls, in storage in warehouse of Sr. Estanislao Arce H., Asuncion and, prior to this, were dead when removed by the applicant from the forests of the Chaco. As they were found as skulls, no statement can be made as to when they were "removed from the wild", except that the hunters were probably Indians after the meat of the tapirs and fur hunters or cattlemen after the pelts or to remove predators on cattle, for the jaguar.

**A résumé of the applicant's attempts to obtain the wildlife to be imported from sources which would not cause the death or removal of additional animals from the wild.** The applicant has more than adequately satisfied this requirement by picking up these skulls himself, without publicity or payment of money for the specimens.

**Effective date of permit.** At your earliest convenience. As soon as I have notification from your office that a permit has been issued, I will notify the importer, Sr. Arce to ship to me.

I hereby certify that I have read and am familiar with the regulations contained in Title 50, Part 13, of the Code of Federal Regulations and the other applicable parts in Subchapter B of Chapter I of Title 50, and I further certify that the information submitted in this application for a permit is complete and accurate to the best of my knowledge and belief. I understand that any false statement hereon may subject me to the criminal penalties of 18 U.S.C. 1001.

Sincerely,

RALPH M. WETZEL,  
Professor of Biology,  
Systematic and Evolutionary Biology.

Documents and other information submitted in connection with this application are available for public inspection during normal business hours at the Service's office in Suite 600, 1612 K Street, NW., Washington, D.C.

Interested persons may comment on this application by submitting written

efforts will be made to ensure that the maximum use is obtained from each carcass.

The data from this study will contribute to the ongoing research on the geographic variation in the American alligator, and will contribute to our knowledge of the ecological variability of the species in poorly studied habitats and geographic areas. In addition, a stock pile of material will be accumulated to meet future needs for educational displays and scientific study. This is expected to result in a significant reduction in the demand on wild populations for specimens for these purposes.

e. Endangered species: Justification of need.

The American alligator is an endangered species. We must increase our knowledge of the ecological requirements of the species in the diverse habitats it utilizes over its wide geographic range so that appropriate management and protective measures can be designed for each unique population. Ecological data and management recommendations from marsh habitats are not necessarily appropriate in the other ecological situations utilized by the species.

This research project will not further deplete the populations of the species since only dead animals will be used and no live animals will be taken.

#### 8. Certification:

I hereby certify that I have read and am familiar with the regulations contained in Title 50, Part 13, of the Code of Federal Regulations and the other applicable parts in Subchapter B of Chapter I of Title 50, and I further certify that the information submitted in this application for a permit is complete and accurate to the best of my knowledge and belief. I understand that any false statement hereon may subject me to the criminal penalties of 18, U.S.C. 1001.

Dated: September 12, 1974.

HOWARD F. CAMPBELL, Ph. D.

Documents and other information submitted in connection with this application are available for public inspection during normal business hours at the Service's office in Suite 600, 1612 K Street, NW., Washington, D.C.

Interested persons may comment on this application by submitting written data, views, or arguments, preferably in triplicate, to the Director (FWS/LE), Fish and Wildlife Service, Post Office Box 19183, Washington, D.C. 20036. All relevant comments received on or before November 18, 1974, will be considered.

Dated: September 12, 1974.

C.R. BAVIN,

Chief, Division of Law Enforcement,  
U.S. Fish and Wildlife  
Service.

[FR Doc.74-24307 Filed 10-17-74; 8:45 am]

## ENDANGERED SPECIES PERMIT

### Receipt of Application

Notice is hereby given that the following application for a permit is deemed to have been received under section 10 of the Endangered Species Act of 1973 (Pub. L. 93-205).

**Applicant:** Ralph M. Wetzel, Ph.D., Systematic and Evolutionary Biology, University of Connecticut, Storrs, Connecticut 06268.

data, views, or arguments, preferably in triplicate, to the Director (FWS/LE), U.S. Fish and Wildlife Service, Post Office Box 19183, Washington, D.C. 20036. All relevant comments received on or before November 18, 1974, will be considered.

Dated: October 7, 1974.

C. R. BAVIN,  
Chief, Division of Law Enforcement,  
U.S. Fish and Wildlife Service.

[FR Doc.74-24309 Filed 10-17-74;8:45 am]

## ENDANGERED SPECIES PERMIT

### Receipt of Application

Notice is hereby given that the following application for a permit is deemed to have been received under section 10 of the Endangered Species Act of 1973 (Pub. L. 93-205).

**Applicant:** Robert A. Thomas, Research Associate, Department of Wildlife & Fisheries Sciences, Texas A&M University, College Station, Texas 77843.

#### ENDANGERED SPECIES RESEARCH PERMIT REQUEST

##### Houston Toad (*Bufo houstonensis*)

Name: Thomas, Robert Allen.  
Mailing Address:  
Office: Department of Wildlife & Fisheries Sciences, Texas A&M University, College Station, Texas 77843.  
Home: 1001 Winding Road, College Station, Texas 77840.  
Telephone—office: 713-845-6751; Home: 713-693-2727.  
Date of birth: April 10, 1946; Height, 6'4"; Weight, 180 lb.  
Hair color: Brown; Eye color: Brown; Sex: Male.

Location of permitted activity: South-central & south-eastern Texas.

Part and Section of Subchapter B. permit requested under: Part 17, section 17.12.

Justification and intent: The intent is to evaluate the status of the endangered species *Bufo houstonensis*. See attached proposal submitted to the Albuquerque office (to the attention of Robert L. Azevedo).

The prohibited act which I intend to perform is to pursue (to record calls, photograph individuals, and estimate population status) *Bufo houstonensis*.

The number of animals will depend on population densities which will probably be quite low. No specimens will be collected or otherwise removed.

The permit should cover the period beginning immediately, and ending July 1, 1975.

I hereby certify that I have read and am familiar with the regulations contained in Title 50, Part 13, of the Code of Federal Regulations and the other applicable parts in subchapter B of Chapter I of Title 50, and I further certify that the information for a permit in this application for a permit is complete and accurate to the best of my knowledge and belief. I understand that any false statement hereon may subject me to the criminal penalties of 18 U.S.C. 1001.

Dated: August 9, 1974.

ROBERT ALLEN THOMAS.

#### PROPOSAL

Status Evaluation of *Bufo houstonensis* Sanders\*

The status of the endangered Wottring Toad, *Bufo houstonensis* Sanders, is ques-

tionable at present. The most recent investigations (Brown 1967, 1971, 1974) indicate that extant *houstonensis* populations are maintaining themselves at incredibly low levels. With the encroachment of man and his facilities, the toad is subject to increased loss of habitat coupled with its being forced into situations which lead to increased hybridization with other toad species. These factors have earned *Bufo houstonensis* the dubious honor of "highest priority" among endangered United States amphibians.

There is some question among herpetologists regarding the taxonomic status of *Bufo houstonensis*. One school of thought considers it to represent a disjunct population of *Bufo americanus* which deserves no taxonomic recognition. The other considers it to be a distinct species presumably derived from *americanus* and/or *terrestris* ancestral stock.

*Bufo houstonensis* is presently known from nine localities (Brown, 1971). The possibility exists that additional populations exist in sandy, loblolly pine habitats, but no intensive search has been executed.

It is our intent to evaluate the status of *Bufo houstonensis* by the following means:

1. To evaluate its relationships with *B. americanus* and *B. terrestris* on the basis of bioacoustical data.

2. To survey habitats which possibly support unreported populations of the Wottring Toad.

3. To estimate population size at each known locality.

4. To assess the future of known habitats of the species based on current plans for the surrounding land.

5. To present suggestions for habitat preservation.

This work will be executed with the cooperation of the Texas Parks and Wildlife Department.

#### LITERATURE CITED

Brown, L. E. 1967. The significance of natural hybridization in certain aspects of the speciation of some North American toads (genus *Bufo*). Ph. D. dissertation, Univ. of Texas, Austin.

—. 1971. Natural hybridization and trend toward extinction in some relict Texas toad populations. *Southwestern Nat.* 16: 185-199.

—. 1974. Status of the Houston toad, *Bufo houstonensis* Sanders. Unpublished report prepared for the Texas Organization of Endangered Species. 5 pp.

\* Principle coordinator: Mr. Robert A. Thomas, Research Associate, Department of Wildlife & Fisheries Sciences, Texas A&M University, College Station, Texas 77843.

Documents and other information submitted in connection with this application are available for public inspection during normal business hours at the Service's office in Suite 600, 1612 K Street, NW., Washington, D.C.

Interested persons may comment on this application by submitting written data, views, or arguments, preferably in triplicate, to the Director (FWS/LE), U.S. Fish and Wildlife Service, Post Office Box 19183, Washington, D.C. 20036. All relevant comments received on or before November 18, 1974, will be considered.

C. R. BAVIN,  
Chief, Division of Law Enforcement,  
U.S. Fish and Wildlife Service.

[FR Doc.74-24306 Filed 10-17-74;8:45 am]

## ENDANGERED SPECIES PERMIT

### Receipt of Application

Notice is hereby given that the following application for a permit is deemed to have been received under section 10 of the Endangered Species Act of 1973 (Pub. L. 93-205).

**Applicant:** The University of Michigan, Department of Zoology, Ann Arbor, Michigan 48104, Dr. Carl Gans, Professor and Chairman.

AUGUST 9, 1974.

U.S. DEPARTMENT OF THE INTERIOR,  
Fish and Wildlife Service,  
Bureau of Sport Fisheries and Wildlife,  
Washington, D.C. 20240.

I attach hereto an application for permit to import four Tuataras (*Sphenodon punctatus*) from New Zealand for purposes of scientific investigation.

I hope that my application contains all the pertinent information.

With thanks for your attention,

Sincerely yours,

CARL GANS,  
Professor and Chairman.

#### STATEMENT

Application to obtain license for the importation and utilization of four specimens of *Sphenodon punctatus* to be imported as two sets of two as provided by the Department of Internal Affairs, New Zealand.

A. Permission is requested to import into the United States hold, transfer to other laboratories as indicated below, carry out experiments on, and dispose of the remains of four specimens of the tuatara (*Sphenodon punctatus*). In making this application I note that *Sphenodon punctatus* is an endangered species under strict control of the government of New Zealand.

The Government of New Zealand maintains a division of their Department of Internal Affairs charged specifically with controlling the provision of tuataras to investigators wishing to carry out research. Their letters of intent are attached as part of this application. The permit will be issued for the specific purpose of permitting us to do research on the animals in question in accordance with the program detailed below.

I now provide the information requested in the excerpt from federal regulations pertaining to importation of such animals.

1. My name is Carl Gans, my business address is Department of Zoology, The University of Michigan, Ann Arbor, Michigan, 48104. My telephone number is 313-764-1467.

2. These specimens will be imported as part of my responsibility as Professor (and Chairman) Department of Zoology, The University of Michigan and principal investigator under National Science Foundation Grant GB 31088X "Functional Morphology of Squamate Reptilia".

3. Not applicable.

4. Much of the research will be carried out in the Natural Science Building, on the campus of The University of Michigan. At least two of the specimens will be carried to the Auditory Research Laboratories of Princeton University. Another experiment is now tentatively planned to be carried out at the facilities of the Museum of Comparative Zoology, Harvard University, Cambridge, Massachusetts 02138. Portions of the animals may be shipped in the frozen state to other laboratories in order to achieve maximum utilization of tissue samples.

5. The permit is requested in our capacity as an educational institution for purposes of Zoological research. (See appendices 1 and 2.)

6. I hereby certify that I have read and am familiar with the regulations contained in Title 50, Part 13, of the Code of Federal Regulations and the other applicable parts in Subchapter B of Chapter I of Title 50, and I further certify that the information submitted in this application for a permit is complete and accurate to the best of my knowledge and belief. I understand that any false statement hereon may subject me to the criminal penalties of 18 U.S.C. 1001.

7. I request that the permit be made effective no later than October 15, 1974 and stay in effect until the purposes for which it is issued have been achieved.

8. August 9, 1974.

CARL GANS,  
Professor and Chairman, Principal  
Investigator NSF—GB31088X.

Documents and other information submitted in connection with this application are available for public inspection during normal business hours at the Service's office in Suite 600, 1612 K Street NW., Washington, D.C.

Interested persons may comment on this application by submitting written data, views, or arguments, preferably in triplicate, to the Director (FWS/LE), Fish and Wildlife Service, Post Office Box 19183, Washington, D.C. 20036. All relevant comments received on or before November 18, 1974, will be considered.

Dated: October 7, 1974.

C. R. BAVIN,  
Chief, Division of Law Enforcement,  
U.S. Fish and Wildlife  
Service.

[FR Doc.74-24305 Filed 10-17-74;8:45 am]

## ENDANGERED SPECIES PERMIT

### Receipt of Application

Notice is hereby given that the following application for a permit is deemed to have been received under section 10 of the Endangered Species Act of 1973 (Pub. L. 93-205).

Applicant: W. O. Nelson, Jr., Regional Director, U.S. Fish and Wildlife Service, Post Office Box 1306, Albuquerque, New Mexico 87103.

August 28, 1974.

To: Director, FWS, Washington, D.C.

From: Regional Director, Region 2, Albuquerque, New Mexico.

Subject: Application for Permit to Take, Harass, Transport, Propagate and Perhaps Save the Red Wolf (*C. rufus gregoryi*).

This memo and the attached material, including the Red Wolf Recovery Plan, constitutes our application for permit(s) to continue the Service's work in attempting to save the red wolf from extinction. We are making this application under terms of 50 CFR (1-9-74) 13.12 and 17.23 which was written to cover importation and other purposes of the 1969 Act. This is not in complete accord with the red wolf project, but presently it is the only guideline we have. Until such time as the 1973 Act is interpreted and more fully implemented, especially the permit sections, we are attempting to fulfill the requirements of the new law with what guidelines are available.

In accordance with sec. 13.12, we submit the following application information:

13.12a(1) W. O. Nelson, Jr., Regional Director, U.S. Fish & Wildlife Service, P.O. Box

1306, Albuquerque, New Mexico 87103 (505-766-2321).

(2) Not applicable.

(3) Lynn Greenwalt, Director, U.S. Fish & Wildlife Service, Washington, D.C. 20240.

(4) Field activities may be carried out in Southeast Texas in the counties of Chambers, Liberty, Jefferson, Orange, Harris, Brazoria, Newton, Jasper and in Southwest Louisiana in the Parishes of Cameron, Vermillion, Calcasieu and Iberia.

Propagation activities are being conducted under cooperative agreement with the Ft. Defiance Zoological Park of the Metropolitan Park Department of Tacoma, Washington. Mr. Norman Winnick, Director of Ft. Defiance Zoological Park is immediate officer in charge of the propagation and zoological distribution activities and is designated as such by the AAZPA, along with the institution he represents.

(5) See Subpart B. 17.23.

(6) Not applicable.

(7) I hereby certify that I have read and am familiar with the regulations contained in Title 50, Part 13, of the Code of Federal Regulations and the other applicable parts in Subchapter 13 of Chapter I of Title 50, and I further certify that the information submitted in this application for a permit is complete and accurate to the best of my knowledge and belief. I understand that any false statement hereon may subject me to the criminal penalties of 18 U.S.C. 1001.

(8) Immediately.

(9) Date: August 29, 1974.

(10) Regional Director's Signature: (s) W. O. Nelson.

(11) See attachments.

17.23b(1) Texas Red Wolf (*C. r. gregoryi*). It is not feasible or possible to provide exact data requested in this sub-section. Red wolves will be removed alive from areas where this is the only means to prevent detrimental action of private parties to the individual animal and the species. An unknown number of wolves will be captured and released in the management area as a part of normal investigative field work into the ecology of the species. Those culls which are taken and do not meet the criteria for classification as red wolves will be removed from the management area in an attempt to safeguard the remaining red wolf gene pool. No red wolves will be intentionally destroyed but the chance of loss exists.

Red wolves which may be taken and cannot be released back into the wild due to depredation problems or the probable destructive actions of a third party will be placed in the captive propagation program under the above mentioned coop-agreement with the Ft. Defiance Zoological Park.

(2) See Attachment #1 of U.S. Fish and Wildlife Service and Ft. Defiance Agreement. All field personnel in this work are covered under applicable valid State permits from Texas and Louisiana. Copies are available upon request.

(3) See Attachment #2, Red Wolf Recovery Plan.

(4) See Attachment #1, Both U.S. Fish and Wildlife Service and Ft. Defiance will maintain records as to distribution of captive individuals in other public institutions as a part of the propagation segment of the Recovery Plan.

(5) All three situations apply to this sub-section.

(6) Not applicable.

(7) Not applicable.

W. O. NELSON, Jr.

Documents and other information submitted in connection with this application are available for public inspection during normal business hours at the

Service's office in Suite 600, 1612 K Street, NW., Washington, D.C.

Interested persons may comment on this application by submitting written data, views, or arguments, preferably in triplicate, to the Director (FWS/LE), Fish and Wildlife Service, Post Office Box 19183, Washington, D.C. 20036. All relevant comments received on or before November 18, 1974, will be considered.

C. R. BAVIN,  
Chief, Division of Law Enforcement,  
U.S. Fish and Wildlife  
Service.

[FR Doc.74-24306 Filed 10-17-74;8:45 am]

## National Park Service

### NATIONAL REGISTRY OF NATURAL LANDMARKS

#### Listing of Additional Sites

By notice in the FEDERAL REGISTER of September 5, 1973 (pp. 23982-23985), there was published a list of sites eligible for inclusion in the National Registry of Natural Landmarks. This list has been amended by a notice in the FEDERAL REGISTER of June 10, 1974 (pp. 20405-20406). Further notice is hereby given that the list of eligible natural landmarks is amended by addition of the sites listed below.

All Federal agencies should take cognizance of the sites included in the National Registry of Natural Landmarks to fulfill the intent of Section 102 of the National Environmental Policy Act of 1969 (83 Stat. 852; 42 U.S.C. 4331).

Dated: October 4, 1974.

RONALD A. WALKER,  
Director,  
National Park Service.

The sites listed below which have been registered are indicated by an asterisk. The following sites have been added to the National Registry:

#### ALABAMA

Beauregard Creek Swamp, Limestone County—Wheeler National Wildlife Refuge, 10 miles northeast of Decatur.  
\*Dismals, Franklin County—4 miles northeast of Hackleburg.  
Mobile-Tensaw River Bottomlands, Baldwin, Mobile, and Washington Counties—extends from Mobile Bay north for 35 miles.

#### ARIZONA

Onyx Cave, Santa Cruz County—7 miles northwest of Sonolita.

#### CALIFORNIA

Anza-Borrego Desert State Park, San Diego, Imperial, and Riverside Counties—vast majority of site is located in eastern San Diego County.  
Nipomo Dunes-Point Sal Coastal Area, San Luis Obispo, and Santa Barbara Counties—extends from Pismo Beach south for 17 miles.  
San Felipe Creek Area, Imperial County—miles northwest of Westmoreland.

#### GEORGIA

\*Camp E. F. Boyd Natural Area, Emanuel County—8 miles southwest of Swainsboro.  
Lewis Island Tract, McIntosh County—8 miles west-northwest of Darien.

*Sag Ponds Natural Area, Bartow County*—5 miles southeast of Adairsville.  
*Spooner Springs, Seminole County*—14 miles west of Bainbridge.

**IDAHO**

*Cassia Silent City of Rocks, Cassia County*—16 miles southeast of Oakley.

**ILLINOIS**

*Funks Grove, McLean County*—11 miles southwest of Bloomington.  
*La Rue-Pine Hills Ecological Area, Union County*—Shawnee National Forest, center of site is 4 miles north of the village of Wolf Lake.

**INDIANA**

*Hoosier Prairie, Lake County*—2 miles southwest of Griffith.  
*\*Pioneer Mothers' Memorial Forest, Orange County*—Wayne-Hoosier National Forest, 1 mile southeast of the town of Paoli.  
*Shrader-Weaver Woods, Fayette County*—7 miles northwest of Connersville.

**KENTUCKY**

*Henderson Sloughs, Henderson and Union Counties*—4 miles northeast of Uniontown.

**MASSACHUSETTS**

*Hawley Bog, Franklin County*—1 mile northwest of the village of Hawley.

**MICHIGAN**

*Northern Hardwood Natural Area, Marquette County*—Upper Peninsula Experimental Forest, 17 miles southeast of Marquette.

**NEW MEXICO**

*Fort Stanton Cave, Lincoln County*—7 miles west of Lincoln.  
*Torgac Cave, Lincoln County*—20 air miles southeast of Corona.

**NEW YORK**

*Iona Island Marsh, Rockland County*—2 miles south of Fort Montgomery.

**NORTH CAROLINA**

*Green Swamp, Brunswick County*—9 miles north of the village of Supply.  
*Long Hope Creek Spruce Bog, Ashe and Watauga Counties*—10 miles north-northeast of Boone.  
*\*Mount Jefferson State Park, Ashe County*—1 mile east of West Jefferson.  
*\*Mount Mitchell State Park, Yancey County*—20 miles northeast of Asheville.  
*Nags Head Woods and Jockey Ridge, Dare County*—1½ miles northwest of Nags Head on Bodie Island.  
*\*Piedmont Beech Natural Area, Wake County*—William B. Umstead State Park, 7 miles northwest of Raleigh.  
*\*Pilot Mountain, Surry County*—Pilot Mountain State Park, 3 miles south of the town of Pilot Mountain.  
*\*Stone Mountain, Alleghany and Wilkes Counties*—Stone Mountain State Park, 9 miles southeast of Sparta.

**RHODE ISLAND**

*Ell Pond, Washington County*—2 miles southwest of Rockville.

**SOUTH CAROLINA**

*Congaree River Swamp, Richland County*—20 miles southeast of Columbia.

**TENNESSEE**

*May Prairie, Coffee County*—3½ miles southeast of Manchester.  
*Piney Falls, Rhea County*—2 miles north of Spring City.

[FR Doc.74-24256 Filed 10-17-74;8:45 am]

**Office of the Secretary  
 COMMISSIONER OF INDIAN AFFAIRS  
 Delegation of Authority**

This notice is issued in accordance with the provisions of 5 U.S.C. 552(a) (1). The Acting Secretary of the Interior has issued a revised delegation of authority to the Commissioner of Indian Affairs. The delegation, which pertains to the issuance of regulations and notices relating to Indian affairs matters, was issued by Departmental Manual Release No. 1683 dated October 3, 1974.

The revised delegation (Chapter 2, Part 230 of the Departmental Manual) is published in its entirety below. Further information regarding the delegation may be obtained from Mr. Harold Cox, Division of Management Research and Evaluation, Bureau of Indian Affairs, 1951 Constitution Avenue, NW, Washington, D.C. 20245, telephone 202-343-4144.

Dated: October 11, 1974.

**RICHARD R. HITE,**  
*Deputy Assistant Secretary  
 of the Interior.*

1. *Delegation.* The Commissioner of Indian Affairs is authorized, subject to the limitations listed in 230 DM 2.2, to exercise all of the authority of the Secretary of the Interior to issue proposed and final regulations relating to Indian affairs (Chapter I, Title 25, Code of Federal Regulations), and public notices relating to Indian affairs.

2. *Limitations.* The delegation contained in 230 DM 2.1 does not authorize the Commissioner of Indian Affairs to issue final regulations which add to, revoke, or amend the following Parts of Chapter I, Title 25, Code of Federal Regulations:

Part 2, Appeals from administrative actions.

Part 16, Estates of Indians of the Five Civilized Tribes.

Part 17, Action on wills of Osage Indians.

[FR Doc.74-24284 Filed 10-17-74;8:45 am]

[INT DES 74-88]

**PROPOSED HAVASU WILDERNESS, HAVASU NATIONAL WILDLIFE REFUGE, CALIFORNIA**

**Availability of Draft Environmental Statement**

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, Pub. L. 91-190, the Department of the Interior has prepared a draft environmental statement for the Proposed Havasu Wilderness, Havasu National Wildlife Refuge, California, and invites written comments on or before December 2, 1974.

The proposal recommends that 2,510 acres of the 41,495-acre Havasu National Wildlife Refuge be designated as a unit of the National Wilderness Preservation System.

Copies of the draft statement are available for inspection at the following locations:

U.S. Fish and Wildlife Service  
 Box 1306  
 Albuquerque, New Mexico 87103  
 Havasu National Wildlife Refuge  
 Box A  
 Needles, California 92225  
 U.S. Fish and Wildlife Service  
 Office of Environmental Coordination  
 Department of the Interior  
 Room 2252  
 18th and C Street NW  
 Washington, D.C. 20240

Single copies may be obtained by writing the Chief, Office of Environmental Coordination, U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240. Comments concerning the proposed action should also be addressed to the Chief, Office of Environmental Coordination. Please refer to the statement number above.

Dated: October 11, 1974.

**STANLEY D. DOREMUS,**  
*Deputy Assistant Secretary  
 of the Interior.*

[FR Doc.74-24302 Filed 10-17-74;8:45 am]

**DEPARTMENT OF AGRICULTURE**

**Forest Service**

**BARRY ARM NO. 1 TIMBER SALE**

**Availability of Final Environmental Statement**

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Forest Service, Department of Agriculture, has prepared a final environmental statement for the Barry Arm No. 1 Timber Sale, Report Number USDA-FS-DES (ADM) R10-74-04.

This environmental statement concerns a proposed timber sale involving the harvesting of 2,849 million board feet of timber.

This final environmental statement was transmitted to CEQ on October 9, 1974.

Copies are available for inspection during regular working hours at the following locations:

USDA, Forest Service  
 South Agriculture Bldg., Room 3230  
 12th St. & Independence Ave., SW.  
 Washington, D.C. 20250  
 U.S. Department of Agriculture  
 Forest Service—Alaska Region  
 Federal Building  
 Juneau, Alaska 99802  
 Forest Supervisor, Chugach National Forest  
 121 W. Fireweed Lane, Suite 205  
 Anchorage, Alaska 99503  
 Forest Supervisor, Chatham Area  
 Tongass National Forest  
 Federal Building  
 Sitka, Alaska 99835  
 Forest Supervisor, Stikine Area  
 Tongass National Forest  
 Federal Building  
 Petersburg, Alaska 99833  
 Forest Supervisor, Ketchikan Area  
 Tongass National Forest  
 Federal Building, Room 313  
 Ketchikan, Alaska 99901

A limited number of single copies are available upon request to Clay G. Beal, Forest Supervisor, Chugach National Forest, 121 W. Fireweed Lane, Anchorage, Alaska 99503.

Copies of the environmental statement have been sent to various Federal, State, and local agencies as outlined in the CEQ guidelines.

Dated: October 9, 1974.

ROBERT H. TRACY,  
Acting Regional Forester,  
Alaska Region.

[FR Doc.74-24269 Filed 10-17-74; 8:45 am]

## LAND USE PLAN FOR THE SOLEDUCK PLANNING UNIT

### Availability of Draft Environmental Statement

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Forest Service, Department of Agriculture, has prepared a draft environmental statement for a land use plan for the Soleduck Planning Unit, Olympic National Forest, Washington, USDA-FS-R6-DES (ADM.) 75-04.

The environmental statement concerns the proposed implementation of a comprehensive land use plan for the Soleduck Planning Unit. The Unit includes three non-selected roadless areas.

This draft environmental statement was filed with CEQ on October 10, 1974.

Copies are available for inspection during regular working hours at the following locations:

USDA, Forest Service  
South Agriculture Bldg., Room 3231  
12th St. & Independence Ave. SW.  
Washington, D.C. 20250

USDA, Forest Service  
319 S.W. Pine St.  
Portland, Oregon 97208  
Olympic National Forest  
Federal Building  
Olympia, Washington 98501  
Soleduck Ranger Station  
Forks, Washington 98331

A limited number of single copies are available upon request to Wynne M. Maule, Forest Supervisor, Olympic National Forest, P.O. Box 2288, Olympia, Washington 98507.

Copies of the environmental statement have been sent to various Federal, state, and local agencies as outlined in the CEQ guidelines.

Comments are invited from the public, and from state and local agencies which are authorized to develop and enforce environmental standards, and from Federal agencies having jurisdiction by law or special expertise with respect to any environmental impact involved for which comments have not been requested specifically.

Comments concerning the proposed action and requests for additional information should be addressed to Wynne M. Maule, Forest Supervisor, Olympic National Forest, P.O. Box 2288, Olympia, Washington 98507. Comments must be received by December 10, 1974, in order to

be considered in the preparation of the final environmental statement.

Dated: October 10, 1974.

ROBERT CROWE,  
Acting Regional Forester.

[FR Doc.74-24270 Filed 10-17-74; 8:45 am]

## DEPARTMENT OF COMMERCE

Domestic and International Business  
Administration

### CORNELL UNIVERSITY

#### Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (37 FR 3892 et seq.).

A copy of the record pertaining to this decision is available for public review during ordinary business hours of the Department of Commerce, at the Office of Import Programs, Department of Commerce, Washington, D.C. 20230.

Docket Number: 74-00556-33-90000.  
Applicant: Cornell University, 310 Bard Hall, Ithaca, New York 14850. Article: 12KW Rotating Anode X-ray Generator System. Manufacturer: Rigaku Denki Co., Ltd., Japan. Intended use of article: The article is intended to be used in research programs cited below whenever rather weak scattered intensities must be recorded over a substantial period of time:

- (1) Collagen as a Biomaterial,
- (2) Direct Method for the Determination of the Core Structure of Dislocations,
- (3) Anharmonicity and Vibrational Character and Spatial Distribution of the Bonding Electrons,
- (4) Structure of Amorphous Materials,
- (5) Structure of Cracks in Polymers,
- (6) Structure of High Angle (001) Twist Boundaries, and
- (7) Local Ordering in Amorphous Semiconductors.

The article will yield an intensity of approximately twenty times that of a conventional x-ray source.

Comments: No comments have been received with respect to this application.

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States.

Reasons: The foreign article provides a small focal spot size and a rotating target for maximum x-ray beam intensity. The Department of Health, Education, and Welfare (HEW) advised in its memorandum dated September 11, 1974 that both of the capabilities described above are pertinent to the applicant's research purposes. HEW also advised that it knows of no domestic instrument of equivalent scientific value to the foreign article for such purposes as this article is intended to be used.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

A. H. STUART,  
Director,

Special Import Programs Division.

[FR Doc.74-24293 Filed 10-17-74; 8:45 am]

## NASA-AMES RESEARCH CENTER

### Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (37 FR 3892 et seq.).

A copy of the record pertaining to this decision is available for public review during ordinary business hours of the Department of Commerce, at the Office of Import Programs, Department of Commerce, Washington, D.C. 20230.

Docket Number: 75-00035-47-07700.  
Applicant: NASA-Ames Research Center, Photographic Technology Branch, N203-6, Moffett Field, CA 94035. Article: Hand Held Aerial Camera. Manufacturer: Linhof Prazisions Kamera Werke GMBH, West Germany. Intended use of article: The article is intended to be used from a variety of aircraft at different altitudes to record data to meet the following objectives:

- (a) Determine numbers of whales, seals, sea lions, etc.
- (b) Determine daily movements in relation to time, sex, season and food availability.

(c) Determine newborn (alive or dead) and maternal relationships.

(d) Determine massive population structure changes as related to diurnal and seasonal influences (migration).

(e) Provide, compare and share the above information with State and Federal agencies concerned with the management of marine mammals.

Comments: No comments have been received with respect to this application.

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States.

Reasons: The foreign article is an aerial camera capable of being handheld and using 5-inch width roll film.

The National Bureau of Standards (NBS) advised in its memorandum dated September 18, 1974, that the specifications described above are pertinent to the purposes for which the article is intended to be used. NBS also advised that it knows of no domestic aerial camera of

equivalent scientific value to the foreign article for the applicant's intended use.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

A. H. STUART,  
Director, Special Import  
Programs Division.

[FR Doc.74-24291 Filed 10-17-74; 8:45 am]

#### UNIVERSITY OF CALIFORNIA ET AL

##### Consolidated Decision on Applications for Duty-Free Entry of Accessories for Foreign Instruments

The following is a consolidated decision on applications for duty-free entry of accessories for foreign instruments pursuant to section 6(c) of the Educational Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (37 FR 3892 et seq.). (See especially § 701.11(e).)

A copy of the record pertaining to each of the applications in this consolidated decision is available for public review during ordinary business hours of the Department of Commerce, at the Special Import Programs Division, Office of Import Programs, Department of Commerce, Washington, D.C. 20230.

Docket Number: 73-00552-00-65600. Applicant: University of California, Los Alamos Scientific Laboratory, P.O. Box 990, Los Alamos, New Mexico 87544. Article: Accessories to Cockcroft-Walton High Voltage Generator. Manufacturer: Emile Haeffley and Company, Switzerland. Intended use of article: The articles are to serve as spare accessories to two existing Cockcroft-Walton High voltage generators being used to produce 750 kilovolts of potential and at the same time deliver 13 milliamperes of current. Application received by Commissioner of Customs: June 4, 1973. Advice submitted by the National Bureau of Standards on: February 25, 1974.

Docket Number: 74-00394-33-54900. Applicant: American Dental Association, Health Foundation, 211 East Chicago Avenue, Chicago, Illinois 60611. Article: Modified Tungsten Reference Lamp. Manufacturer: University of Nottingham, United Kingdom. Intended use of article: The article is intended to be used in studies of electronic excited states in biomaterials to provide a steady tungsten source reference beam to control the light output from the biomaterials. Application received by Commissioner of Customs: March 25, 1974. Advice submitted by the Department of Health, Education, and Welfare on: June 20, 1974.

Docket Number: 74-00536-00-14200. Applicant: University of California, Facility for Advanced Instrumentation, Davis, California 95616. Article: Form Separator Module and Light Pen Module. Manufacturer: Metals Research Limited, United Kingdom. Intended use of article: The article is an accessory to an existing IMANCO 720 Image Analyzing Computer being used in research on the pred-

ator-prey relationship between *Bdellovibrio bacteriovorus* and its bacterial host by detection of the change of the host cell from a rod to a sphere when attacked successfully by *Bdellovibrio*. Application received by Commissioner of Customs: June 24, 1974. Advice submitted by the Department of Health, Education, and Welfare on: September 10, 1974.

Docket Number: 74-00554-00-46040. Applicant: Case Western Reserve University, 2040 Adelbert Road, Cleveland, Ohio 44106. Article: Universal Camera. Manufacturer: Siemens Corp., West Germany. Intended use of article: The article, a modernized accessory for an existing high resolution electron microscope, is needed to facilitate current projects designed for quantitative electron microscopy and to improve the ability to obtain high quality photographs of tissue sections and macromolecules in a routine manner. Specific research projects which will be added by the accessory include:

1. A study on the formation of myofibrils in developing skeletal and cardiac muscle,
2. An analysis of the factors influencing the aggregation of myosin and acting in aqueous solutions, and
3. Studies on nerve function and morphology.

In addition the article will be used to train graduate researchers and trainees in high resolution electron microscopy in the following courses:

- Anatomy 495. Fundamentals of Electron microscopy,
- Anatomy 601. Research Training in the Morphological Sciences, and
- Anatomy 701. Research Training for Doctoral Thesis.

Application received by Commissioner of Customs: June 26, 1974. Advice submitted by the Department of Health, Education, and Welfare on: September 11, 1974.

Docket Number: 75-00026-00-46040. Applicant: Arizona State University, Department of Physics, Tempe, AZ 85281. Article: High Magnification Accessory for JEM-100B Electron Microscope. Manufacturer: JEOL Ltd., Japan. Intended use of article: The article is an accessory for an existing electron microscope and will be used for a continuation of work on high-resolution high magnification electron microscopy of crystals. Application received by Commissioner of Customs: July 17, 1974. Advice submitted by the National Bureau of Standards on: September 19, 1974.

Comments: No comments have been received with respect to any of the foregoing applications. Decision: Applications approved. No instrument or apparatus of equivalent scientific value to the foreign articles, for the purposes for which the articles are intended to be used, is being manufactured in the United States.

Reasons: The applications relate to compatible accessories for instruments that have been previously imported for the use of the applicant institutions. The articles are being manufactured by the

manufacturers which produced the instruments with which they are intended to be used. We are advised by the Department of Health, Education, and Welfare or the National Bureau of Standards in their respectively cited memoranda that the accessories are pertinent to the applicant's intended uses and that it knows of no comparable domestic articles.

The Department of Commerce knows of no similar accessories manufactured in the United States which are interchangeable with or can be readily adapted to the instruments with which the foreign articles are intended to be used.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

A. H. STUART,  
Director,  
Special Import Programs Division.

[FR Doc.74-24294 Filed 10-17-74; 8:45 am]

#### UNIVERSITY OF TENNESSEE MEDICAL UNITS

##### Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (37 FR 3892 et seq.).

A copy of the record pertaining to this decision is available for public review during ordinary business hours of the Department of Commerce, at the Office of Import Programs, Department of Commerce, Washington, D.C. 20230.

Docket Number: 74-00551-33-46040. Applicant: University of Tennessee Medical Units, Department of Anatomy, 875 Monroe, Memphis, TN 38163. Article: Electron Microscope, Model EM 301. Manufacturer: Philips Electronic Instruments NVD, The Netherlands. Intended use of article: The article is intended to be used for research on cell membrane complexes in the nervous system, e.g. visualization of surface topography of saccharides, the fine structural localization of glutamate decarboxylase, and the fine structure of developing chick retina. The article will also be used to train pre- and postdoctoral students in the methodologies of electron microscopy.

Comments: No comments have been received with respect to this application.

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, was being manufactured in the United States at the time the foreign article was ordered (May 8, 1974). Reasons: The foreign article has a specified resolving capability of 3 Angstroms (Å). The most closely comparable domestic instrument available at the time the article was ordered was the model EMU-4C electron microscope supplied by Adam David Company. The Model EMU-4C had

a specified resolving capability of 5Å. Resolving capability bears an inverse relationship to its numerical rating in Å, i.e., the lower the rating, the better the resolving capability. We are advised by the Department of Health, Education, and Welfare (HEW) in its memorandum dated September 11, 1974 that the best resolution available is pertinent to the applicant's intended uses of the article, which includes ultrastructural studies in tracing sugar residues attached to glycoproteins in localizing neurotransmitter molecules and in developing gap and tight junction membrane. HEW further advised that domestic instruments did not provide resolution equivalent to that of the foreign article at the time the article was ordered. We, therefore, find that the EMU-4C was not of equivalent scientific value to the foreign article, for such purpose as this article is intended to be used at the time the article was ordered.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which was being manufactured in the United States at the time the foreign article was ordered.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

A. H. STUART,  
Director,

Special Import Programs Division.

[FR Doc.74-24292 Filed 10-17-74; 8:45 am]

#### Maritime Administration

[Docket No. S-425]

#### ACHILLES MARINE SHIPPING CO. ET AL. Multiple Applications

Notice is hereby given that Achilles Marine Shipping Company, Ajax Marine Shipping Company and Athena Marine Shipping Company, Delaware Corporations, have filed applications with the Maritime Subsidy Board pursuant to Title VI (46 U.S.C. 1171-1183) of the Merchant Marine Act, 1936, as amended (the Act) requesting long term operating-differential subsidy on six (two each) new (to be constructed) diesel-powered tanker vessels of approximately 51,000 deadweight tons each. Such vessels will be operated in world-wide carriage of liquid and dry bulk cargoes in the foreign oceanborne commerce of the United States not subject to the presently existing cargo preference statutes of the United States including, but not limited to, 10 U.S.C. 2631, 46 U.S.C. 1241, and 15 U.S.C. 616a.

Any person having an interest in the granting of one or any of such applications and who would contest a finding by the Maritime Subsidy Board that the service now provided by vessels of United States registry for the world-wide carriage of liquid and dry bulk cargoes, not subject to the presently existing cargo

preference statutes, moving in the foreign commerce of the United States or in any particular trade in the foreign commerce of the United States is inadequate, must, on or before October 31, 1974, notify the Board's Secretary, in writing, of his interest and his position and file a petition for leave to intervene in accordance with the Board's rules of practice and procedure (46 CFR Part 201). Each such statement of interest and petition to intervene shall state whether a hearing is requested under section 605(c) of the Merchant Marine Act, 1936, as amended, and with as much specificity as possible the facts that the intervenor would undertake to prove at such hearing. Further, each such statement shall identify the applicant or applicants against which the intervention is lodged.

In the event that a section 605(c) hearing is ordered to be held with respect to any of the applications identified hereinabove the purpose of such hearing will be to receive evidence relevant to whether the service already provided by vessels of U.S. registry for the world-wide movement of liquid and dry bulk cargoes in the foreign oceanborne commerce of the United States is inadequate and whether in the accomplishment of the purposes and policy of the Act additional vessels should be operated thereon.

If no request for hearing and petition for leave to intervene is received within the specified time, or if the Maritime Subsidy Board determines that petitions for leave to intervene filed within the specified time do not demonstrate sufficient interest to warrant a hearing, the Maritime Subsidy Board will take such action as may be deemed appropriate.

(Catalog of Federal Domestic Assistance Program No. 11.504 Operating-Differential Subsidies (ODS))

Dated: October 15, 1974.

By order of the Maritime Subsidy Board.

JAMES S. DAWSON,  
Secretary.

[FR Doc.74-24338 Filed 10-17-74; 8:45 am]

[Docket No. S-420]

#### AERON MARINE SHIPPING CO.

##### Application

Notice is hereby given that Aeron Marine Shipping Company (Aeron) has filed an amendment, dated October 10, 1974, to its approved application for operating-differential subsidy covering the prospective operation of two (2) tankers (now under construction) of approximately 89,700 deadweight tons each.

Aeron requests modification of its Operating-Differential Subsidy Agreement, Contract No. MA/MSB-166 (the Agreement), to provide that the vessels shall operate in the world-wide carriage of liquid and dry bulk cargo and shall carry exclusively commercial liquid and dry bulk cargo not subject to the cargo

preference statutes of the United States, including, but not limited to, 10 U.S.C. 2631, 15 U.S.C. 616a, and 46 U.S.C. 1241, however, the operator would be eligible to participate in the carriage, at prevailing world rates, of dry bulk cargo subject to 46 U.S.C. 1241, for which there is no unsubsidized, privately-owned, United States flag commercial flag vessel available at fair and reasonable rates.

The vessels of Aeron are now permitted, under the Agreement, to operate in the world-wide carriage of liquid cargo and carry exclusively commercial liquid cargoes not subject to the cargo preference statutes of the United States, including, but not limited to, 10 U.S.C. 2631, 15 U.S.C. 616a, and 46 U.S.C. 1241.

Any party having an interest in this application and who would contest a finding by the Board that the service now provided by vessels of United States registry for the world-wide carriage of liquid and dry bulk cargoes as proposed by the applicant moving in the foreign commerce of the United States or in any particular trade in the foreign commerce of the United States is inadequate, must, on or before October 15, 1974, notify the Secretary in writing of his interest and of his position and file a petition for leave to intervene in accordance with the Board's rules of practice and procedure (46 CFR Part 201). Each such statement of interest and petition to intervene shall state whether a hearing is requested under section 605(c) of the Merchant Marine Act, 1936, as amended, and with as much specificity as possible the facts that the intervenor would undertake to prove at such hearing.

In the event that a section 605(c) hearing is ordered to be held, the purpose of such hearing will be to receive evidence relevant to whether the service already provided by vessels of U.S. registry for the world-wide movement of liquid and dry bulk cargoes in the foreign oceanborne commerce of the United States is inadequate and whether in the accomplishment of the purposes and policy of the Act additional vessels should be operated in such service.

If no request for hearing and petition for leave to intervene is received within the specified time, or if the Maritime Subsidy Board determines that petitions for leave to intervene filed within the specified time do not demonstrate sufficient interest to warrant a hearing the Maritime Subsidy Board will take such action as may be deemed appropriate.

(Catalog of Federal Domestic Assistance Program No. 11.504 Operating-Differential Subsidies (ODS))

Dated: October 15, 1974.

By order of the Maritime Subsidy Board.

JAMES S. DAWSON, Jr.,  
Secretary.

[FR Doc.74-24339 Filed 10-17-74; 8:45 am]

National Oceanic and Atmospheric  
Administration

COMMERCIAL FISHING OPERATIONS

Public Hearing

Notice is hereby given that an informal public hearing will be held commencing at 9 a.m. local time on November 21, 1974, in the National Marine Fisheries Service Penthouse Conference Room, Page Building 1, 2001 Wisconsin Avenue, N.W., Washington, D.C.

The purpose of the hearing is to obtain the comments and views of interested parties with respect to possible amendments to the terms and conditions of existing regulations established pursuant to the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407) governing "Encircling gear: yellowfin tuna purse seining" (50 CFR 216.24(d) (2)), which may be desirable as a consequence of information contained in and developed in conjunction with a draft report of the National Marine Fisheries Service, Southwest Fisheries Center, dealing with Eastern Tropical Pacific porpoise populations and recent National Marine Fisheries Service fishing gear and technology research. In addition, those portions of the draft report or comments thereon which are relevant to possible changes in said existing regulations will be considered.

Amendments of the existing regulations, if adopted, will have the effect of modifying the general permit(s) for "Encircling gear: yellowfin tuna purse seining" and each certificate of inclusion issued pursuant thereto.

The recently prepared draft report referred to above is being reviewed by committees of scientists within and outside the Service and by the Marine Mammal Commission. A portion of their comments has been received. The remainder of the comments are expected prior to the hearing, and will be available to the public as soon as received.

The draft report, with the comments of the reviewers received to date, is now available for public inspection at the Office of the Director, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, D.C., as well as at the NMFS Regional Offices in Gloucester, Massachusetts; St. Petersburg, Florida; Terminal Island, California; Seattle, Washington; and Juneau, Alaska. Copies can be obtained from the Office of the Director, National Marine Fisheries Service, Washington, D.C. 20235, by completing Department of Commerce form CD-244, and paying ten cents (\$.10) per page requested, plus a Two Dollar (\$2.00) application fee.

At the hearing, interested persons will be afforded an opportunity to present their comments and views, and to question representatives of the National Marine Fisheries Service. In regard to possible amendments to the existing regulations, the following subjects among others may be addressed:

- (1) Requiring fishing technique changes, such as—
  1. Release of all of certain species of porpoises captured in a net;

- ii. Limitation by species of porpoise which can be set on;

- iii. Limitation of sets under defined sea conditions and/or weather conditions; and
- iv. Limitation of sets during particular hours, such as within two hours of sunset.

- (2) Establishing some form of limits per vessel on the absolute number of porpoises which may be killed or seriously injured.

- (3) Requiring additional, different, or modified gear or equipment, such as nets or speedboats.

- (4) Restricting sets on porpoise in the capture of tuna in specified geographical areas.

- (5) Placing enforcement agents on board tuna purse seine fishing vessels.

The above subjects are general areas of possible amendments to the regulations, but do not represent specific proposals by the National Marine Fisheries Service at this time.

Individuals and organizations may express their views or opinions by appearing at the hearing, or by submitting written comments for inclusion in the official record to the Director, National Marine Fisheries Service, Washington, D.C. 20235. Written comments will be accepted for the official record provided

they are postmarked no later than December 15, 1974. Any inquiries with respect to this hearing should be made to the Director.

Dated: October 16, 1974.

ROBERT W. SCHONING,  
Director, National Marine  
Fisheries Service.

[FR Doc.74-24371 Filed 10-17-74;8:45 am]

DEPARTMENT OF HEALTH,  
EDUCATION, AND WELFARE

Food and Drug Administration

ADVISORY COMMITTEES

Notice of Meetings

Pursuant to the Federal Advisory Committee Act of October 6, 1973 (Pub. L. 92-463, 86 Stat. 770-776; 5 U.S.C. App.), the Food and Drug Administration announces the following public advisory committee meetings and other required information in accordance with provisions set forth in section 10(a) (1) and (2) of the act:

Committee name	Date, time, place	Type of meeting and contact person
1. Panel on Review of Bacterial Vaccines and Bacterial Antigens.	November 1 and 2, 9 a.m., Room 121, Bldg. 29, National Institutes of Health, 8500 Rockville Pike, Bethesda, Md.	Open November 1, 9 a.m. to 10 a.m., closed November 1 after 10 a.m., closed November 2. Jack Gertzog, (HFB-5), 8500 Rockville Pike, Bethesda, Md. 20014, 301-496-1670.

**Purpose.** Advises the Commissioner of Food and Drugs on the safety and effectiveness of bacterial vaccines and bacterial antigens with no U.S. standards of potency.

**Agenda.** Open session: Previous minutes; communications received; and comments and presentations by interested persons. Closed session: Continuing review of bacterial vaccines and bacterial antigens under investigation.

Committee name	Date, time, place	Type of meeting and contact person
2. Panel on Review of Hemorrhoidal Drugs.	November 1 and 2, 9 a.m., Conference Room C, Parklawn Bldg., 5500 Fishers Lane, Rockville, Md.	Open November 1, 9 a.m. to 10 a.m., closed November 1 after 10 a.m., closed November 2. Thomas DeChillo, (HFD-169), 5500 Fishers Lane, Rockville, Md. 20852, 301-443-4960.

**Purpose.** Reviews and evaluates available data concerning the safety and effectiveness of active ingredients, and combinations thereof, of currently marketed nonprescription drug products for human use for hemorrhoidal application.

**Agenda.** Open session: Comments and presentations by interested persons. Closed session: Continuing review of safety and efficacy of over-the-counter hemorrhoidal drug products.

Committee name	Date, time, place	Type of meeting and contact person
3. Subcommittee on the Division of Training and Medical Applications of the Medical Radiation Advisory Committee.	November 3, 10 a.m., Room T-400, Bldg. 4, 12720 Twinbrook Pkwy., Rockville, Md.	Open—William S. Cole, M.D., (HFX-4), 6600 Fishers Lane, Rockville, Md. 20852, 301-443-6220.

**Purpose.** Advises and consults with the Bureau of Radiological Health in the formulation of policy and the development of a coordinated program related to application of ionizing radiation in the healing arts.

**Agenda.** Quality assurance direction of bureau programs; gonadal shielding proposed guidelines; implementation program; and radiologic technologist educational project.

Committee name	Date, time, place	Type of meeting and contact person
4. Nuclear Medicine Subcommittee of the Medical Radiation Advisory Committee.	November 3, 1 p.m., Room 316, Chapman Bldg., 1900 Chapman Ave., Rockville, Md.	Open—William S. Cole, M.D., (HFX-4), 6600 Fishers Lane, Rockville, Md. 20852, 301-443-6220.

**Purpose.** Advises and consults with the Bureau of Radiological Health in the formulation of policy and the development of a coordinated program related to application of ionizing radiation in the healing arts.

**Agenda.** Progress of pilot study for nuclear medicine information system and discussion of alternatives to Iodine 131 in thyroid diagnostic procedures.

Committee name	Date, time, place	Type of meeting and contact person
5. Panel on Review of Gastroenterological and Urological Devices.	November 4, 9:30 a.m., Room 1409, FB-8, 200 O St SW., Washington, D.C.	Open 9:30 a.m. to 10:30 a.m., closed after 10:30 a.m. Thomas L. Anderson, M.D., (HFE-130), 5600 Fishers Lane, Rockville, Md. 20852, 201-443-3359.

**Purpose.** Reviews and evaluates available data concerning the safety, effectiveness, and reliability of gastroenterological and urological devices currently in use.

**Agenda.** Open session: Comments and presentations by interested persons and responsibility for repair and maintenance of devices. Closed session: Classification of devices.

Committee name	Date, time, place	Type of meeting and contact person
6. Panel on Review of General Hospital and Personal Use Devices.	November 4, 9 a.m., Room 6821, FB-8, 200 O St SW., Washington, D.C.	Open 9 a.m. to 10 a.m., closed after 10 a.m. William C. Dierckheide, Ph.D., (HFE-130), 5600 Fishers Lane, Rockville, Md. 20852, 201-443-2370.

**Purpose.** Reviews and evaluates available data concerning the safety, effectiveness, and reliability of general hospital and personal use devices currently in use.

**Agenda.** Open session: Introduction and charge to members; goals of classification effort; methods of classification;

and comments and presentations by interested persons. Closed session: Review and finalization of form of general hospital and personal use device list.

Committee name	Date, time, place	Type of meeting and contact person
7. Ophthalmic Drugs Advisory Committee.	November 4, 9 a.m., Conference Room C, Parklawn Bldg., 5600 Fishers Lane, Rockville, Md.	Open 9 a.m. to 10 a.m., closed after 10 a.m. Mary E. Bruch (HFD-149), 5600 Fishers Lane, Rockville, Md. 20852, 201-443-4310.

**Purpose.** Advises the Commissioner of Food and Drugs regarding safety and efficacy of drugs employed in the treatment of diseases and disorders of the eye.

**Agenda.** Open session: Review of industry committee report on effectiveness and safety of antibiotic-steroid combina-

tions for ophthalmic use; report of clinical cases of mycotic infections of the eye treated with pimaricin; and comments and presentations by interested persons. Closed session: Discussion of clinical studies for IND 8331.

Committee name	Date, time, place	Type of meeting and contact person
8. Science Advisory Board of the National Center for Toxicological Research.	November 4 and 5, 8:30 a.m., November 4—National Center for Toxicological Research, Jefferson, Ark. November 5—University of Arkansas, Little Rock, Ark.	Open—A. E. Davis, Ph.D., Bldg. 13, Room 43, National Center for Toxicological Research, Jefferson, Ark. 72079, 201-337-4223.

**Purpose.** Advises the Director, National Center for Toxicological Research, in establishing and implementing a research program that will assist the Commissioner of Food and Drugs and the Administrator, Environmental Protection Agency, in fulfilling their regulatory responsibilities. Provides the extra-agency review in assuring that research programs and methodology development are scientifically sound and pertinent to environmental problems.

**Agenda.** At the Center, discussion of carcinogenesis and related programs; discussion of pathogenesis; and a tour of the facilities. At the University, discussion of methods development and risk estimation involving carcinogenesis; reports of the subcommittee chairmen; discussion of the projected research programs; and consideration of specific program recommendations.

Committee name	Date, time, place	Type of meeting and contact person
9. Panel on Review of Viral Vaccines and Rickettsial Vaccines.	November 4 and 5, 9 a.m., Room 121, Bldg. 23, National Institutes of Health, 8500 Rockville Pike, Bethesda, Md.	Open November 4, 9 a.m. to 10 a.m., closed November 4 after 10 a.m., closed November 5. Jack Gertzog, (HFB-6), 8500 Rockville Pike, Bethesda, Md. 20814, 201-426-1670.

## NOTICES

**Purpose.** Advises the Commissioner of Food and Drugs on the safety and effectiveness of viral vaccines and rickettsial vaccines, and combinations thereof; reviews and evaluates available data concerning the safety, effectiveness, and adequacy of labeling of currently marketed biological products consisting of live, attenuated virus, inactivated virus, or killed inactivated rickettsial micro-

organisms, used either singly or in combination, to prevent a variety of specific infectious diseases in man caused by viral or rickettsial microorganisms.

**Agenda.** Open session: Previous minutes; communications received; and comments and presentations by interested persons. Closed session: Continued review of products in this category.

Committee name	Date, time, place	Type of meeting and contact person
10. Medical Radiation Advisory Committee.	November 4 and 5, 9 a.m., Room T-400, Bldg. 4, 12720 Twinbrook Pkwy., Rockville, Md.	Open—William S. Cole, M.D., (HFX-4), 5600 Fishers Lane, Rockville, MD 20852, 301-443-6220.

**Purpose.** Advises and consults with the Bureau of Radiological Health in the formulation of policy and the development of a coordinated program related to application of ionizing radiation in the healing arts.

**Agenda.** Progress report on the nuclear medicine survey; report on the benign disease project; report on the bone marrow project; tour of the radiation laboratory; report on the I-123 project; quality assurance projects; and related subjects.

Committee name	Date, time, place	Type of meeting and contact person
11. Dental Drug Products Advisory Committee.	November 7 and 8, 9 a.m., Conference Room J, Parklawn Bldg., 5600 Fishers Lane, Rockville, Md.	Open November 7, 9 a.m. to 10 a.m., closed November 7 after 10 a.m., closed November 8. Clarence G. Gilkes, D.D.S., (HFD-169), 5600 Fishers Lane, Rockville, Md. 20852, 301-443-3500.

**Purpose.** Reviews and evaluates all available data concerning the safety and effectiveness of presently marketed and new prescription drug products proposed for marketing for use in the practice of dentistry.

**Agenda.** Open session: Comments and presentations by interested persons.

Closed session: Discussion of professionally applied stannous fluoride paste by Caulk Company and discussion of fluoride home treatment kits. (Data to be discussed will be unpublished data submitted by the companies.)

Committee name	Date, time, place	Type of meeting and contact person
12. Panel on Review of Oral Cavity Drug Products.	November 7 and 8, 9 a.m., Conference Room B, Parklawn Bldg., 5600 Fishers Lane, Rockville, Md.	Open November 7, 9 a.m., to 10 a.m., closed November 7 after 10 a.m., closed November 8. John T. McElroy, (HFD-109), 5600 Fishers Lane, Rockville, Md. 20852, 301-443-4500.

**Purpose.** Reviews and evaluates available data concerning the safety and effectiveness of active ingredients, and combinations thereof, of currently marketed nonprescription drug products for human use containing oral hygiene drug products.

**Agenda.** Open session: Comments and presentations by interested persons. Closed session: Continuing review of safety and efficacy of oral cavity drug products.

Committee name	Date, time, place	Type of meeting and contact person
13. Panel on Review of Bacterial Vaccines and Toxoids.	November 7 and 8, 9 a.m., Room 121, Bldg. 23, National Institutes of Health, 8800 Rockville Pike, Bethesda, Md.	Open November 7, 9 a.m., to 10 a.m., closed November 7 after 10 a.m., closed November 8. Jack Gertzog (HFB-5), 8800 Rockville Pike, Bethesda, Md. 20852, 301-490-1670.

**Purpose.** Advises the Commissioner of Food and Drugs on the safety and effectiveness of bacterial vaccines and toxoids with standards of potency.

**Agenda.** Open session: Previous minutes; communications received; and

comments and presentations by interested persons. Closed session: Continuing review of bacterial vaccines and toxoids under investigation.

Committee name	Date, time, place	Type of meeting and contact person
14. Panel on Review of Contraceptives and other Vaginal Drug Products.	November 8 and 9, 9 a.m., Conference Room H, Parklawn Bldg., 5600 Fishers Lane, Rockville, Md.	Open November 8, 9 a.m. to 10 a.m., closed November 8 after 10 a.m., closed November 9. Armond Welch (HFD-109), 5600 Fishers Lane, Rockville, Md. 20852, 301-443-4900.

**Purpose.** Reviews and evaluates available data concerning the safety and effectiveness of active ingredients, and combination thereof, of currently marketed non-prescription drug products containing contraceptives or other vaginal drug products.

**Agenda.** Open session: Comments and presentations by interested persons. Closed session: Continuing review of over-the-counter contraceptives and other vaginal drug products under investigation.

Committee name	Date, time, place	Type of meeting and contact person
15. Panel on Review of Internal Analgesic Including Antirheumatic Drugs.	November 11 and 12, 9 a.m., Conference Room J., Parklawn Bldg., 5600 Fishers Lane, Rockville, Md.	Closed November 11, open November 12, 9 a.m. to 10 a.m., closed November 12 after 10 a.m. Lee Gelsmar, (HFD-109), 5600 Fishers Lane, Rockville, Md. 20852, 301-443-4300.

**Purpose.** Reviews and evaluates available data concerning the safety and effectiveness of active ingredients, and combinations thereof, of currently marketed nonprescription drug products for human use containing internal analgesic agents.

**Agenda.** Open session: Comments and presentations by interested persons. Closed session: Continuing review of nonprescription internal analgesic drug products under investigation.

Committee name	Date, time, place	Type of meeting and contact person
16. Panel on Review of Neurology Devices.	November 13, 9:30 a.m., Room 1409, FB-8, 200 G St. SW., Washington, D.C.	Open 9:30 a.m. to 11 a.m., closed after 11 a.m. James R. Veale, (HFK-490), 5600 Fishers Lane, Rockville, Md. 20852, 301-443-3330.

**Purpose.** Reviews and evaluates available data concerning safety, effectiveness, and reliability of neurology devices currently in use.

**Agenda.** Open session: Orientation briefings and comments and presentations by interested persons. Closed session: Review of the panel device list and discussion of the classification logic scheme and the classification of several representative devices.

Committee name	Date, time, place	Type of meeting and contact person
17. Radioactive Pharmaceuticals Advisory Committee.	November 14 and 15, 9 a.m., Conference Room A, Parklawn Bldg., 5600 Fishers Lane, Rockville, Md.	Open November 14, 9 a.m. to 4 p.m., closed November 14 after 4 p.m., closed November 15. C. H. Maxwell, M.D., (HFD-140), 5600 Fishers Lane, Rockville, Md. 20852, 301-443-4234.

**Purpose.** Advises the Commissioner of Food and Drugs regarding safety and efficacy of drugs employed in nuclear medicine.

**Agenda.** Open session: Discussion of NaI-123 as an alternative to NaI-131; nuclear medicine survey status report; dose calculations of radiopharmaceuticals; proposed regulations for radioactive drugs; discussion of nuclear pharmacy; and comments and presentations by interested persons. Closed session: Status of INDs and NDAs and discussion of clinical studies for radiopharmaceuticals.

Committee name	Date, time, place	Type of meeting and contact person
18. Panel on Review of Vitamin, Mineral, and Hematinic Drug Products.	November 15 and 16, 2 p.m., Room 1409, FB-8, 200 G St. SW., Washington, D.C.	Closed November 15, 9 a.m. to 2 p.m., open November 15, 2 p.m. to 3 p.m., closed November 15 after 3 p.m., closed November 16. Thomas DeCillis, (HFD-109), 5600 Fishers Lane, Rockville, Md. 20852, 301-443-4300.

**Purpose.** Reviews and evaluates available data concerning the safety and effectiveness of active ingredients, and combinations thereof, of currently marketed nonprescription vitamin, mineral, and hematinic drug products, and the adequacy of their labeling.

**Agenda.** Open session: Comments and presentations by interested persons. Closed session: Continuing review of over-the-counter vitamin, mineral, and hematinic drug products under investigation.

Committee name	Date, time, place	Type of meeting and contact person
19. Panel on Review of Orthopaedic Devices.	November 16, 9 a.m., Holiday Inn—Rivermont, Memphis, Tenn.	Open 9 a.m. to 10 a.m.; closed after 10 a.m. James R. Veale, (HFK-490), 5600 Fishers Lane, Rockville, Md. 20852, 301-443-3330.

**Purpose.** Reviews and evaluates available data concerning safety, effectiveness, and reliability of orthopaedic devices currently in use.

**Agenda.** Open session: Comments and presentations by interested persons. Closed session: Review classification of implants from last meeting; review remainder of orthopaedic devices, including surgical instruments; and discussion of Utah Contract on Orthopedic Implants.

Committee name	Date, time, place	Type of meeting and contact person
20. Surgical Drugs Advisory Committee.	November 18, 9 a.m.; Conference Room M, Parklawn Bldg., 5600 Fishers Lane, Rockville, Md.	Open 9 a.m. to 10 a.m., closed after 10 a.m. Gerald M. Rachanow, (HFD-160), 5600 Fishers Lane, Rockville, Md. 20852, 301-443-3500.

**Purpose.** Advises the Commissioner of Food and Drugs regarding safety and efficacy of drugs employed in surgery.

**Agenda.** Open session: Comments and presentations by interested persons. Closed session: Discussion of NDA 17-600 (Avicon, Inc.); IND 3608 (Unilabs, Inc.); NDA 17-645 (H. Ghadimi, M.D.); and NDA 17-643 (Cutter Laboratories).

Committee name	Date, time, place	Type of meeting and contact person
21. Controlled Substances Advisory Committee.	November 20 and 21, 9 a.m., Conference Room G, Parklawn Bldg., 5600 Fishers Lane, Rockville, Md.	Open November 20, open November 21, 9 a.m. to 11 a.m., closed November 21 after 11 a.m. J. Stephen Kennedy, Ph.D., (HFD-120), 5600 Fishers Lane, Rockville, Md. 20852, 301-443-3504.

**Purpose.** Advises the Commissioner of Food and Drugs on scientific and medical aspects of control of abusable substances.

**Agenda.** Open session: Discussion of nalbuphene, halazepam, prazepam, pholcodine, and the thiophene analog of phencyclidine; general discussion of the Drug Abuse Warning Network (DAWN), interpretation and intent of the Controlled Substances Act, and testing procedures for determining dependence liability or abuse potential of drugs; and comments and presentations by interested persons. Closed session: Discussion of formulation of recommendations regarding possible regulatory actions involving the topics listed above as well as proprietary information relating to the drugs. (Interested persons who may wish to present information to the committee are requested to contact Dr. Kennedy at least 10 days prior to the meeting and are requested to submit 15 copies of any written material for committee review.)

Committee name	Date, time, place	Type of meeting and contact person
22. Panel on Review of General and Plastic Surgery Devices.	November 22, 9:30 a.m., Room 1409, FB-8, 200 C St. SW., Washington, D.C.	Open 9:30 a.m., to 10:30 a.m., closed after 10:30 a.m., Mark F. Parrish, Ph.D., (HFK-400), 5600 Fishers Lane, Rockville, Md. 20852, 301-443-3550.

**Purpose.** Reviews and evaluates available data concerning the safety, effectiveness, and reliability of general and plastic surgery devices currently in use.

**Agenda.** Open session: Discussion of the Federal Food, Drug, and Cosmetic Act and proposed medical device amendments and comments and presentations by interested persons. Closed session: Review of revised general and plastic surgery medical device list and initial application of medical device classification system to selected devices.

Committee name	Date, time, place	Type of meeting and contact person
23. Panel on Review of Skin Test Antigens.	November 22 and 23, 8:30 a.m., Room 121, Bldg. 29, National Institutes of Health, 8500 Rockville Pike, Bethesda, Md.	Open November 22, 8:30 a.m., to 9:30 a.m., closed November 22 after 9:30 a.m., closed November 23, Clay Sisk, (HFB-5), 8500 Rockville Pike, Bethesda, Md. 20014, 301-490-2883.

**Purpose.** Reviews and evaluates available data concerning the safety, effectiveness, and adequacy of labeling of currently marketed biological products which are used in diagnostic substances for dermal tests.

**Agenda.** Open session: Presentation of previous minutes; communications received; and comments and presentations by interested persons. Closed session: Continuing review of skin test antigens under investigation.

Committee name	Date, time, place	Type of meeting and contact person
24. Panel on Review of Topical Analgesics.	November 26 and 27, 9 a.m., Conference Room J, Parklawn Bldg., 5600 Fishers Lane, Rockville, Md.	Open November 26, 9 a.m. to 10 a.m., closed November 26 after 10 a.m., closed November 27, Leo Geismar, (HFD-100), 5600 Fishers Lane, Rockville, Md. 20852, 301-443-4960.

**Purpose.** Reviews and evaluates available data concerning the safety and effectiveness of active ingredients, and combinations thereof, of currently marketed nonprescription drug products for human use containing topical analgesics.

**Agenda.** Open session: Comments and presentations by interested persons. Closed session: Continuing review of over-the-counter topical analgesics under investigation.

Agenda items are subject to change as priorities dictate.

During the open sessions shown above, interested persons may present relevant information or views orally to any committee for its consideration. Information or views submitted to any committee in writing before or during a meeting shall also be considered by the committee.

A list of committee members and summary minutes of meetings may be obtained from the contact person for the committee both for meetings open to the public and those meetings closed to the public in accordance with section 10(d) of the Federal Advisory Committee Act.

Most Food and Drug Administration advisory committees are created to advise the Commissioner of Food and Drugs on pending regulatory matters. Recommendations made by the committees on these matters are intended to result in action under the Federal Food, Drug, and Cosmetic Act, and these committees thus necessarily participate with the Commissioner in exercising his law enforcement responsibilities.

The Freedom of Information Act recognized that the premature disclosure of regulatory plans, or indeed internal discussions of alternative regulatory approaches to a specific problem, could have adverse effects upon both public and private interests. Congress recognized that such plans, even when finalized, may not be made fully available in advance of the effective date without damage to such interests, and therefore provided for this type of discussion to remain confidential. Thus, law enforcement activities have long been recognized as a legitimate subject for confidential consideration.

These committees often must consider trade secrets and other confidential information submitted by particular manufacturers which the Food and Drug Administration by law may not disclose, and which Congress has included within the exemptions from the Freedom of Information Act. Such information includes safety and effectiveness information, product formulation, and manufacturing methods and procedures, all of which are of substantial competitive importance.

In addition, to operate most effectively, the evaluation of specific drug or device products requires that members of committees considering such regulatory matters be free to engage in full and frank discussion. Members of committees have frequently agreed to serve and to provide their most candid advice on the understanding that the discussion would be private in nature. Many experts would be unwilling to engage in candid public discussion advocating regulatory action against a specific product. If the committees were not to engage in the deliberative portions of their work on a confidential basis, the consequent loss of frank and full discussion among committee members would severely hamper the value of these committees.

The Food and Drug Administration is relying heavily on the use of outside experts to assist in regulatory decisions. The Agency's regulatory actions uniquely affect the health and safety of every citizen, and it is imperative that the best advice be made available to it on a continuing basis in order that it may most effectively carry out its mission.

A determination to close part of an advisory committee meeting does not mean that the public should not have ready access to these advisory committees considering regulatory issues. A determination to close the meeting is subject to the following conditions: First, any interested person may submit written data or information to any committee, for its consideration. This information will be accepted and will be considered by the committee. Second, a portion of every committee meeting will be open to the public, so that interested persons may present any relevant information or views orally to the committee. The period for open discussion will be designated in any announcement of a committee meeting. Third, only the deliberative portion of a committee meeting, and the portion dealing with trade secret and confidential information, will be closed to the public. The portion of any meeting during which nonconfidential information is made available to the committee will be open for public participation. Fourth, after the committee makes its recommendations and the Commissioner either accepts or rejects them, the public and the individuals affected by the regulatory decision involved will have an opportunity to express their views on the decision. If the decision results in promulgation of a regulation, for example, the proposed regulation will be published for public comment. Closing a committee meeting for deliberations on regulatory matters will therefore in no way preclude public access to the committee itself or full public comment with respect to the decisions made based upon the committee's recommendation.

The Commissioner has been delegated the authority under section 10(d) of the Federal Advisory Committee Act to issue a determination in writing, containing the reasons therefor, that any advisory committee meeting is concerned with matters listed in 5 U.S.C. 552(b), which contains the exemptions from the public disclosure requirements of the Freedom of Information Act. Pursuant to this authority, the Commissioner hereby determines, for the reasons set out above, that the portions of the advisory committee meetings designated in this notice as closed to the public involve discussion of existing documents falling within one of the exemptions set forth in 5 U.S.C. 552(b), or matters that, if in writing, would fall within 5 U.S.C. 552(b), and that it is essential to close such portions of such meetings to protect the free exchange of internal views and to avoid undue interference with Agency and committee operations. This determination shall apply only to the designated portions of such meetings which relate

to trade secrets and confidential information or to committee deliberations.

Dated: October 11, 1974.

A. M. SCHMIDT,  
Commissioner of Food and Drugs.

[FR Doc.74-24217 Filed 10-17-74; 8:45 am]

#### Office of Education

### COMPREHENSIVE EDUCATIONAL PLANNING AND EVALUATION GRANTS

#### Closing Date for Receipt of Applications

Notice is hereby given that pursuant to the authority contained in Part C of Title V of the Elementary and Secondary Education Act of 1965 (84 Stat. 145-148, 20 U.S.C. 867-867c) applications are being accepted from State and local educational agencies for comprehensive educational planning and evaluation grants.

Applications must be received by the U.S. Office of Education on or before February 7, 1975.

A. *Applications sent by mail.* An application for a grant from a local educational agency should be submitted through its State educational agency in time for the State agency to review the application and forward all applications from that State together to the Office of Education in accordance with the provisions of 45 CFR 129.4(b).

Applications forwarded by State educational agencies should be addressed to the U.S. Office of Education, Division of State Assistance, 400 Maryland Avenue, SW., (ROB 3, Room 3010) Washington, D.C. 20202. An application sent by mail will be considered to be received on time by the Division of State Assistance if:

(1) The application was sent by registered or certified mail not later than the fifth calendar day prior to the closing date (or if such fifth calendar day is a Saturday, Sunday, or Federal holiday, not later than the next following business day), as evidenced by the U.S. Postal Service postmark on the wrapper or envelope, or on the original receipt from the U.S. Postal Service; or

(2) The application is received on or before the closing date by either the Department of Health, Education, and Welfare, or the U.S. Office of Education mail room in Washington, D.C. (In establishing the date of receipt, the Commissioner will rely on the time-date stamp of such mail rooms or other documentary evidence of receipt maintained by the Department of Health, Education, and Welfare, or the U.S. Office of Education.)

B. *Hand delivered applications.* An application to be hand delivered must be taken to the U.S. Office of Education, Division of State Assistance, Room 3010, Regional Office Building Three, 7th and D Streets, SW., Washington, D.C. Hand delivered applications will be accepted daily between the hours of 8:00 a.m. and 4:00 p.m. Washington, D.C. time except Saturdays, Sundays, or Federal holidays. Applications will not be accepted after 4:00 p.m. on the closing date.

C. *Program information and forms.* Information and application forms may be obtained from the U.S. Office of Edu-

cation, Division of State Assistance, 400 Maryland Avenue, SW., (ROB 3, Room 3010) Washington, D.C. 20202.

D. *Applicable regulations.* The regulations applicable to this program include the Office of Education General Provisions Regulations (45 CFR Part 100a) published in the FEDERAL REGISTER on November 6, 1973 at 38 FR 30654 and regulations governing Federal Grants for Comprehensive Educational Planning and Evaluation (45 CFR Part 129).

(20 U.S.C. 867-867c)

Dated: October 10, 1974.

(Catalog of Federal Domestic Assistance Number 13.542; Strengthening State and Local Educational Agencies—Grants for Comprehensive Educational Planning and Evaluation)

T. H. BELL,  
U.S. Commissioner of Education.

[FR Doc.74-24267 Filed 10-17-74; 8:45 am]

### INTERNATIONAL STUDIES CENTERS

#### Closing Date for Receipt of Applications

Notice is hereby given that pursuant to the authority contained in section 601 (a) of Title VI of the National Defense Education Act of 1958, as amended (20 U.S.C. 511(a)), applications are being accepted from institutions of higher education for continuation grants under the International Studies Centers Program.

In order to be assured of consideration for funding from appropriations for Fiscal Year 1975, applications must be received by the U.S. Office of Education Application Control Center on or before January 15, 1975.

A. *Applications sent by mail.* An application sent by mail should be addressed as follows: U.S. Office of Education, Application Control Center, 400 Maryland Avenue SW., Washington, D.C. 20202, Attention: 13.435. An application sent by mail will be considered to be received on time by the Application Control Center if:

(1) The application was sent by registered or certified mail not later than the fifth calendar day prior to the closing date (or if such fifth calendar day is a Saturday, Sunday, or Federal holiday, not later than the next following business day), as evidenced by the U.S. Postal Service postmark on the wrapper or envelope, or on the original receipt from the U.S. Postal Service; or

(2) The application is received on or before the closing date by either the Department of Health, Education, and Welfare or the U.S. Office of Education mail rooms in Washington, D.C. (In establishing the date of receipt, the Commissioner will rely on the time-date stamp of such mail rooms or other documentary evidence of receipt maintained by the Department of Health, Education, and Welfare, or the U.S. Office of Education.)

B. *Hand delivered applications.* An application to be hand delivered must be taken to the U.S. Office of Education Application Control Center, Room 5673, Regional Office Building Three, 7th and D Streets, SW., Washington, D.C. Hand

delivered applications will be accepted daily between the hours of 8 a.m. and 4 p.m. Washington, D.C. time except Saturdays, Sundays or Federal holidays. Applications will not be accepted after 4 p.m. on the closing date.

**C. Program information and forms.** Information and application forms may be obtained from the Language and Area Centers Program, Bureau of Postsecondary Education, U.S. Office of Education, Room 3671, 7th and D Streets, SW., Washington, D.C. 20202.

Dated: October 10, 1974.

(Catalog of Federal Domestic Assistance Number 13.435; Higher Education—Language and Area Centers Program)

T. H. BELL,

U.S. Commissioner of Education.

[FR Doc.74-24268 Filed 10-17-74;8:45 am]

## DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 74-239]

### SCIENCE ADVISORY COMMITTEE

#### Open Meeting

This is to give notice in accordance with section 10(a) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. 1) of October 6, 1972, that the Science Advisory Committee will conduct an open meeting October 24-25, 1974, in Room 10214 of the Nassif Building, 400 Seventh Street SW., Washington, D.C. 20590. The meeting is scheduled to begin at 8:30 a.m. each day.

The agenda for this Tenth Meeting of the Science Advisory Committee is as follows:

- (1) Review of action taken at the Ninth Meeting.
- (2) Status of Department of Transportation and Coast Guard participation in "Ocean Policy" Study.
- (3) Review of Research and Development Study, "Impact of the Energy Shortage on the Coast Guard, Present and Future".
- (4) Progress Report, "Hand-off of Research and Development Projects to the Office of Engineering".
- (5) How can Research and Development support the Coast Guard's expanded Loran-C Program?
- (6) Status of Federal Research Program, "Arctic Offshore Research, Fiscal Years 1976-83".
- (7) Techniques for presenting Research, Development, Test, and Evaluation budgets to top management.
- (8) Acquisition of major operational cost savings via targeted Research, Development, Test, and Evaluation.
- (9) Selection of Committee Chairman, and suggestions for new members.
- (10) Effectiveness of Research, Development, Test, and Evaluation within the Coast Guard, its leadership, its personnel resources, its project assignments, and its productivity.
- (11) Date, place and thrust of next meeting.

The Coast Guard Science Advisory Committee was established in 1970 to provide a broad external and neutral point of view in the review of the Coast Guard's Research, Development, Test, and Evaluation effort, to make recommendations for the development of new techniques that are applicable to Coast Guard missions, new or revised approaches to scientific inquiry, more effective utilization of the Research and Development staff, the interfacing of the Coast Guard program with other scientific and technological programs, particularly those of other elements of the Department of Transportation and the Department of the Navy, to review Coast Guard long-range Research and Development program planning, and propose changes in Research, Development, Test, and Evaluation policy, program emphasis, staffing, scope, and use of facilities.

Due to an administrative error, this notice is being published in less than the 15 days before the beginning of the meeting, which is less than the notice recommended by the Office of Management and Budget in Circular No. A-63, Revised.

Interested persons may seek additional information or the summary minutes of the meeting by writing to:

Captain Wilfred R. Bleakley, Jr., USCG  
U.S. Coast Guard (G-DP/62)  
Washington, D.C. 20590

or by calling (202) 426-1031.

Dated: October 16, 1974.

G. G. BROWN, Jr.,  
Acting Chief, Office of  
Research and Development.

[FR Doc.74-24500 Filed 10-17-74;10:15 am]

### Federal Railroad Administration

[FRA Waiver Petition No. HS-74-11]

### CHEHALIS WESTERN RAILROAD CO.

#### Petition for Exemption From Hours of Service Act

The Chehalis Western Railroad Company has petitioned the Federal Railroad Administration pursuant to 45 U.S.C. 64a(e) for an exemption, with respect to certain employees, from the Hours of Service Act; 45 U.S.C. 61, 62, 63 and 64.

Interested persons are invited to participate in this proceeding by submitting written data, views, or comments. Communications should be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, Attention: FRA Waiver Petition No. HS-74-11, Room 5101, 400 Seventh Street SW., Washington, D.C. 20590. Communications received before December 1, 1974, will be considered before final action is taken on this petition. All comments received will be available for examination by interested persons during business hours in Room 5101, Nassif Building, 400 Seventh Street SW., Washington, D.C. 20590.

Issued in Washington, D.C., on October 22, 1974.

DONALD W. BENNETT,

Chief Counsel,

Federal Railroad Administration.

[FR Doc.74-24343 Filed 10-17-74;8:45 am]

## ATOMIC ENERGY COMMISSION

[Docket No. 50-471]

### BOSTON EDISON CO. ET AL.

#### Assignment of Members of Atomic Energy and Licensing Appeal Board

Notice is hereby given that, in accordance with the authority in 10 CFR 2.787 (a), the Chairman of the Atomic Safety and Licensing Appeal Panel has assigned the following panel members to serve as the Atomic Safety and Licensing Appeal Board for this proceeding:

Richard S. Salzman, Chairman  
Dr. John H. Buck, Member  
Michael C. Farrar, Member

Dated: October 10, 1974.

ROMAYNE M. SKRUTSKI,

Secretary to the  
Appeal Board.

[FR Doc.74-24320 Filed 10-17-74;8:45 am]

[Dockets Nos. 50-277 & 50-278]

### PHILADELPHIA ELECTRIC CO.

#### Issuance of Amendments to Facility Operating Licenses

The Atomic Energy Commission (the Commission) is considering the issuance of amendments to Facility Operating Licenses Nos. DPR-44 and DPR-56 issued to Philadelphia Electric Company (the Licensee) for operation of the Peach Bottom Atomic Power Station, Units 2 and 3 located in Peach Bottom, York County, Pennsylvania.

The amendments would revise the provisions in the Technical Specifications relating to fuel densification in accordance with the licensee's application dated July 12, 1974. Operation of the facilities would be within the limits and restrictions of both the change to the Technical Specifications and the Emergency Core Cooling System evaluation, including proposed Technical Specifications submitted by the licensee on August 5, 1974. In the interim, before the change in the Technical Specifications covered by this notice is authorized, the present Technical Specifications are being modified in part in another action to reflect certain, more accurate data which are also included as part of the data base for the change covered by this notice.

The notice provides that on or before November 18, 1974, any member of the public whose interest may be affected by the proceeding may file a request for a public hearing in the form of a petition for leave to intervene with respect to whether the amendments to the facility operating licenses should be issued.

Petitions for leave to intervene must be filed under oath or affirmation and in accordance with the provisions of § 2.714 of 10 CFR Part 2 of the Commission's regulations. A petition for leave to intervene must set forth the interest of the petitioner in the proceeding, how that interest may be affected by results of the proceeding, and the petitioner's contentions with respect to the proposed licensing action. Such petitions must be filed in accordance with the provisions of the FEDERAL REGISTER notice and § 2.714, and must be filed with the Secretary of the Commission, U.S. Atomic Energy Commission, Washington, D.C. 20545, Attention: Docketing and Service Section by November 18, 1974. A copy of the petition and/or request for hearing should be sent to the Chief Hearing Counsel, Office of the General Counsel, Regulation, U.S. Atomic Energy Commission, Washington, D.C. 20545, and to Edward J. Bauer, Jr., Esquire, Philadelphia Electric Company, 2301 Market Street, Philadelphia, Pennsylvania 19101, attorney for the licensee.

A petition for leave to intervene must be accompanied by a supporting affidavit which identifies the specific aspect or aspects of the proceeding as to which intervention is desired and specifies with particularity the facts on which the petitioner relies as to both his interest and his contentions with regard to each aspect on which intervention is requested. Petitions stating contentions relating only to matters outside the Commission's jurisdiction will be denied.

All petitions will be acted upon by the Commission or designated licensing board or by the Chairman of the Atomic Safety and Licensing Board Panel. Timely petitions will be considered to determine whether a hearing should be noticed or another appropriate order issued regarding the disposition of the petitions.

In the event that a hearing is held and a person is permitted to intervene, he becomes a party to the proceeding and has a right to participate fully in the conduct of the hearing. For example, he may present evidence and examine and cross-examine witnesses.

For further details with respect to this action, see (1) the application for amendments dated July 12, 1974 and August 5, 1974, (2) the Commission's Supplement 1 to the "Technical Report on Densification of General Electric Reactor Fuels" dated December 14, 1973, (3) the proposed license amendments and changes to the Technical Specifications, and (4) the related Safety Evaluation by the Directorate of Licensing, which are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C., and at the Martin Memorial Library, 159 E. Market Street, York, Pennsylvania. A single copy of items (2), (3), and (4) above may be obtained upon request addressed to the U.S. Atomic Energy Commission, Washington, D.C. 20545, Attention: Deputy Director for

Reactor PROJECTS, Directorate of Licensing—Regulation.

Dated at Bethesda, Maryland, this 16th day of October 1974.

For the Atomic Energy Commission.

GEORGE LEAR,  
Chief, Operating Reactors  
Branch No. 3, Directorate of  
Licensing.

[FR Doc.74-24506 Filed 10-17-74; 10:33 am]

### CIVIL AERONAUTICS BOARD

[Docket No. 25280; Agreement C.A.B. 24681  
R-1 through R-3; Order 74-10-55]

### INTERNATIONAL AIR TRANSPORT ASSOCIATION

### Order Regarding Specific Commodity Rates

Issued under delegated authority October 9, 1974.

Agreement C.A.B.	Specific commodity item No.	Description and rate
24681: R-1	4201	Parts of Automobiles, motorcycles, etc. 297 cents per kg., minimum weight 1,000 kgs. From New York to Ankara 263 cents per kg., minimum weight 1,000 kgs. From New York to Istanbul Cancellation.
R-2	6339	Plastic Tape, for Electrical Insulation 120 cents per kg., minimum weight 500 kgs. 120 cents per kg., minimum weight 1,000 kgs. From New York to Istanbul.
R-3	7046	Photographic Sensitized Paper 230 cents per kg., minimum weight 100 kgs. 251 cents per kg., minimum weight 200 kgs. 233 cents per kg., minimum weight 500 kgs. From New York to Nairobi.

<sup>1</sup> See tariffs for complete commodity description.

Pursuant to authority duly delegated by the Board in the Board's Regulations, 14 CFR 385.14, it is not found that the subject agreement is adverse to the public interest or in violation of the Act, provided that approval is subject to the conditions hereinafter ordered.

Accordingly, it is ordered, That:

Agreement C.A.B. 24681, R-1 through R-3, be and hereby is approved, provided that approval shall not constitute approval of the specific commodity descriptions contained therein for purposes of tariff publications; provided further that tariff filings shall be marked to become effective on not less than 30 days' notice from the date of filing.

Persons entitled to petition the Board for review of this order, pursuant to the Board's regulations, 14 CFR 385.50, may file such petitions within ten days after the date of service of this order.

This order shall be effective and become the action of the Civil Aeronautics Board upon expiration of the above period, unless within such period a petition for review thereof is filed or the Board gives notice that it will review this order on its own motion.

This order will be published in the FEDERAL REGISTER.

[SEAL]

EDWIN Z. HOLLAND,  
Secretary.

[FR Doc.74-24334 Filed 10-17-74; 8:45 am]

An agreement has been filed with the Board pursuant to section 412(a) of the Federal Aviation Act of 1958 (the Act) and Part 261 of the Board's Economic Regulations between various air carriers, foreign air carriers, and other carriers embodied in the resolutions of the Joint Traffic Conferences of the International Air Transport Association (IATA), and adopted pursuant to the provisions of Resolution 590 dealing with specific commodity rates.

The agreement as set forth below names two additional specific commodity rates reflecting reductions from general cargo rates and the cancellation of another rate; and was adopted pursuant to an unopposed notice to the carriers and promulgated in an IATA letter dated September 30, 1974.

### COMMISSION ON CIVIL RIGHTS

### COLORADO STATE ADVISORY COMMITTEE

### Agenda and Notice of Open Meeting

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a planning meeting of the Colorado State Advisory Committee (SAC) to this Commission will convene at 10:00 a.m. on October 31, 1974, in Room 1430, Federal Building, 1961 Stout Street, Denver, Colorado 80202.

Persons wishing to attend this meeting should contact the Committee Chairman, or the Mountain States Regional Office of the Commission, Room 216, 1726 Champa Street, Denver, Colorado 80202.

The purpose of this meeting shall be to plan for the release of the Colorado prison report.

This meeting will be conducted pursuant to the rules and regulations of the Commission.

Dated at Washington, D.C., October 2, 1974.

ISAIAH T. CRESWELL, Jr.,

Advisory Committee  
Management Officer.

[FR Doc.74-24347 Filed 10-17-74; 8:45 am]

**DELAWARE STATE ADVISORY COMMITTEE****Agenda and Notice of Open Meeting**

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a planning meeting of the Delaware State Advisory Committee will convene at 12:00 Noon on November 1, 1974, at the Young Men's Christian Association, 11 and Washington Streets, Wilmington, Delaware 19801.

Persons wishing to attend this meeting should contact the Committee Chairman, or the Mid-Atlantic Regional Office of the Commission, Room 510, 2120 L Street, NW., Washington, D.C. 20037.

The purpose of this meeting shall be to continue plans for a conference on equal employment opportunities in the State of Delaware.

This meeting will be conducted pursuant to the rules and regulations of the Commission.

Dated at Washington, D.C., October 2, 1974.

ISAIAH T. CRESWELL, Jr.,  
Advisory Committee  
Management Officer.

[FR Doc.74-24348 Filed 10-17-74;8:45 am]

**OHIO STATE ADVISORY COMMITTEE****Agenda and Notice of Open Meeting**

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a planning meeting of the Ohio State Advisory Committee (SAC) to this Commission will convene at 12:30 p.m. on November 2, 1974, at the Holiday Inn Downtown, 802 West Eighth Street, Cincinnati, Ohio 45208.

Persons wishing to attend this meeting should contact the Committee Chairman, or the Midwestern Regional Office of the Commission, Room 1428, 219 South Dearborn Street, Chicago, Illinois 60604.

The purpose of this meeting shall be to formulate plans for the release of the Ohio prison report.

This meeting will be conducted pursuant to the rules and regulations of the Commission.

Dated at Washington, D.C., October 2, 1974.

ISAIAH T. CRESWELL, Jr.,  
Advisory Committee  
Management Officer.

[FR Doc.74-24349 Filed 10-17-74;8:45 am]

**COUNCIL ON ENVIRONMENTAL QUALITY****ENVIRONMENTAL IMPACT STATEMENTS****Availability**

Environmental impact statements received by the Council on Environmental Quality from October 7 through October 11, 1974. The date of receipt for each statement is noted in the statement summary. Under Council Guidelines the

minimum period for public review and comment on draft environmental impact statements is forty-five (45) days from this FEDERAL REGISTER notice of availability. (December 2, 1974). The thirty (30) day period for each final statement begins on the day the statement is made available to the Council and to commenting parties.

Copies of individual statements are available for review from the originating agency. Back copies will also be available at cost, from the Environmental Law Institute, 1346 Connecticut Avenue, Washington, D.C. 20036.

**DEPARTMENT OF AGRICULTURE**

Contact: Dr. Fred H. Tschirley, Acting Coordinator, Environmental Quality Activities, Office of the Secretary, U.S. Department of Agriculture, Room 331-E, Administration Building, Washington, D.C. 20250, (202) 447-3965.

**RURAL ELECTRIFICATION ADMINISTRATION****Draft**

Winger/Grass Lake Power, Polk, Clearwater, and Beltrami Counties, Minn., October 10: Proposed is the granting of a loan to the Minnkota Power Coop. in order to finance 36 miles of 230kV power line from Winger, Minn. to the Grass Lake Station southeast of Wilton, Minn. Included is an additional 18 mile section to be constructed and owned by the Otter Tail Power Co. Adverse impacts will include the cutting of timber, soil erosion, aesthetic effects, and temporary construction disruption (two volumes). (ELR order No. 41553).

**SOIL CONSERVATION SERVICE****Draft**

Honolua Watershed Project, Maui County, Hawaii, October 7: The statement refers to the project for watershed protection and flood prevention in Maui County. Project measures consist of 8 desilting basins, about 0.8 mile of floodwater diversions, and about 0.7 mile of floodwater channels. The action will eliminate agricultural production and marginal wildlife habitat; remove trees and shrubs along channel work areas; and produce some water, air, and noise pollution during construction (50 pages). (ELR order No. 41528).

**ATOMIC ENERGY COMMISSION**

Contact: For Non-Regulatory Matters: Mr. W. Herbert Pennington, Office of Assistant General Manager, E-201, AEC, Washington, D.C. 20545, 301-973-4241. For Regulatory Matters: Mr. A. Giambusso, Deputy Director for Reactor Projects, Directorate of Licensing, P-722, AEC, Washington, D.C. 20545, 301-973-7373.

**Final**

Clinton Power Station, Units 1 and 2, De Witt County, Ill., October 8: Proposed is the issuance of construction permits to the Illinois Power Co. for the Clinton Station. Each of the two units will employ identical boiling water reactors to produce up to 2894 MWt each; electrical production will be 950 MWe (net) each. Exhaust steam will be cooled by a once-through flow of water in a system incorporating a cooling lake with makeup water from Salt Creek and its North Fork. Supplementary cooling will be necessary to limit discharge temperature to the lake to 98 degrees F. Construction related activities will utilize 6,135 acres of the 13,800 to 15,210 acre site; 4,900 acres will be inundated for by the cooling lake. Comments made by: AHP,

DOC, USDA, DOT, HEW, DOI, FPC, EPA, State and local agencies and concerned citizens. (ELR Order No. 41538.)

Pilgrim Nuclear Station, Unit 2, Massachusetts, October 7: Proposed is the issuance of a construction permit to the Boston Edison Co. for unit 2, a 3,456 MWt, 1,180 MWe (net) pressurized water reactor. Cooling and service water will be drawn from Cape Code Bay at a rate of 1,848 cfs, and passed back, (at from 18 to 20 degrees F higher temperature), through an open-channel surface jet discharge. As a result of the unit construction, about 3.5% of the vicinity's harvestable Irish moss will be lost. (The draft for this statement considered the combined impacts of constructing Units 2 and 3. The applicant has deferred construction of the third unit, and withdrawn its application to the AEC). Comments made by (ELR Order No. 41534.)

**DEPARTMENT OF DEFENSE****ARMY CORPS**

Contact: Mr. Francis X. Kelly, Director, Office of Public Affairs, Attn: DAEN-DAP, Office of the Chief of Engineers, U.S. Army Corps of Engineers, 1000 Independence Avenue SW., Washington, D.C. 20314, 202-693-7168.

**Draft**

Regulation of Lakes Superior and Ontario, October 7: The proposed plan considers that the objective of regulation of Lake Superior outflows should be to provide benefits to interests throughout the Great Lakes system without undue detriment to Lake Superior interests. To achieve this objective all control works in the St. Marys River, including but not limited to the 16-gate control structure and all power canals, their head gates and their by-passes should be operated so as to keep the levels of Lakes Superior and Michigan-Huron at the same relative position within their recorded ranges of stage and with respect to their mean levels. Adverse impacts are loss of wetlands, reduction of fish habitat, and potential for increased pollution concentration. (ELR Order No. 41526.)

Mississippi River Levees and Channel Improvements, October 9: The statement refers to the Mississippi River Levees and Channel Improvement project and related projects on more than 900 miles of river between Cairo, Illinois and Venice, La. The projects are designed to make the Mississippi River more navigable and prevent flooding by utilizing dikes and revetments, levees, and maintenance and construction dredging of the mainstem and key harbors in Arkansas, Illinois, Kentucky, Louisiana, Mississippi, and Tennessee. Adverse impacts are degradation of water quality due to dredging, and the loss of 2,500 acres of cropland and 30,000 acres of woodland and associated wildlife habitat (Vicksburg District). (ELR Order No. 41544.)

Kapaaka Flood Control Project, Hawaii, October 7: The statement refers to the proposed Kapaaka Flood Control Project, Molokai, Hawaii. The project consists of a rock trapezoidal channel extending from the ocean inland to a point approximately 180 ft. north of Kamehameha Highway. A debris basin will be constructed north of the highway, and earthen protective and diversion levees will be constructed on both sides of the channel and the debris basin. The construction will cause traffic congestion, dust and contribute to vehicular emissions. Soil erosion of exposed earth surfaces will occur (Honolulu District) (37 pages). (ELR Order No. 41530.)

Scajaquada Creek and Tributaries, Flood Control, New York, October 7: The statement refers to the flood control project for

Scajaquada Creek and Tributaries. The plan involves 9,100 Ft. of channel improvement, a total of about 16,800 ft. of channelization on tributaries, two sections of levee, removal, replacement or enlargement of obstructive bridges, culverts and conduits, and the sealing of sanitary sewer manholes subject to submergence. Adverse impacts are increased turbidity, loss of land and vegetation, and construction disturbance (Buffalo District) (217 pages). (ELR Order No. 41525.)

Swift Creek Basin, Edgecombe and Nash Counties, N.C., October 7: The project involves the construction of a flood control project on Swift Creek located in Edgecombe and Nash Counties. The project consists of about 28 miles of stream snagging and clearing on Swift Creek and about 1.7 miles of channel excavation on the White Oak Swamp tributary. Adverse impacts are the loss of fishery and wildlife resources in portions of Swift Creek and White Oak Swamp (Wilmington District). (ELR Order No. 41523.)

Diked Disposal Area, Site No. 2, Erie Harbor, Pa., October 7: The statement discusses the construction and operation of a 101 acre diked disposal facility to receive polluted sediments dredged from Erie Harbor, Pa. The diked area will provide for the deposition of 2,050,000 cu. yds. of dredged spoil during a 10 year period. Adverse impacts are the elimination of 101 acres of Lake Erie and its associated biota; elimination of some shoreline vegetation; some construction-related effects including turbidity; and resuspension of bot sediments (Buffalo District) (233 pages). (ELR Order No. 41522.)

Brazos Island Harbor, Maintenance, Cameron County, Tex., October 8: The statement refers to the proposed continued maintenance of Brazos Island Harbor, Cameron County, Texas. Dredged materials will be disposed of in leveed land areas in the Gulf of Mexico. Adverse impacts are retarded benthic productivity, and loss of some wildlife habitat (Galveston District) (65 pages). (ELR Order No. 41535.)

Galveston Harbor and Channel, Galveston County, Tex., October 10: The statement refers to the proposed continued maintenance of Galveston Harbor and Channel by periodic removal of shoaled materials. Maintenance will be performed with a hopper dredge with materials disposed of in a designated area in the Gulf of Mexico. Adverse impacts are loss of benthic community in dredge area, and temporary turbidity (Galveston District). (ELR Order No. 41550.)

Craney Island Disposal Area, Replacement Study, Virginia, October 7: The statement discusses the Craney Island Disposal Area Replacement Study at Port of Hampton Roads, Virginia. One feature of the statement's recommendations will be to increase the elevation and capacity of the existing disposal area by gradually raising its levees. Additional recommendations are westward extension to the existing Craney Island; an island site in Suffolk; two fill sites in the lower Chesapeake Bay; and, ocean disposal. Adverse impacts are negative aesthetic impacts and construction activities associated with raising levees (Norfolk District) (85 pages). (ELR Order No. 41527.)

Richmond Flood Protection Measures, Virginia, October 7: The statement discusses the studies that have been made to examine all effective floodcontrol measures for Richmond. The outcome of the investigations was the recommendation of two economically justified floodwall proposals, plus evacuation. The floodwalls would protect the Shockoe Creek area and the South Side Sewage Treatment Plant. The buildings riverward of the Shockoe floodwall and the commercial and industrial development on Mayo Island and Belle Island eventually would be evacuated.

There will be temporary negative impacts usually associated with construction (Norfolk District) (45 pages). (ELR Order No. 41532.)

Port of Hampton Roads, Channel Deepening Study, Virginia. The statement discusses the plans for improvement of existing Federal projects in the Port of Hampton Roads. The project consists of: increasing the depths of Norfolk Harbor Channel; increasing the depth of Channel to Newport News; dredging of a new channel to connect Thimble Shoal Channel with the Atlantic Ocean; increasing the depths of anchorages C and D; and, constructing four new anchorages. Implementation of the proposed improvements would remove or disrupt some neritic and benthic organisms and would result in temporary increases in turbidity near the dredge area and open water disposal area (Norfolk District) (70 pages). (ELR Order No. 41524.)

#### Final

Namo River, Guam, October 10: The statement refers to a project involving both structural and non-structural flood control measures for one mile of the Namu River. The construction of channel works will destroy some riparian habitat. (70 pages). Comments made by: DOC, DOI, EPA, AEP, HEW, USCG, USDA, Government of Guam. (ELR Order No. 41548.)

Ports of Whitman Co., Clarkston, and No. Lewiston, Washington, October 8: The project consists of the sale of 143 acres of land to the Port of Whitman County and 67 acres to the Port of Clarkston. The Ports intend to develop the land as an industrial site as well as a loading and unloading point for cargo. The statement also deals with the possible easement of one other port and industrial site known as the North Lewiston site. Adverse impacts are increased air and noise pollution, and the likelihood of oil, fuel or other spills that would cause the water quality to deteriorate (Walla Walla District). (125 pages). Comments made by: DOI, EPA, DOC, HEW, HUD, State and local agencies, and concerned citizens. (ELR Order No. 41539.)

#### ENVIRONMENTAL PROTECTION AGENCY

Contact: Mr. Sheldon Meyers, Director, Office of Federal Activities, Room 3630 Water-side Mall, Washington, D.C. 20460, (202) 755-0940.

#### Draft

Northwest Sewage Facility, Houston, Texas, October 9: Proposed is the granting of Federal funds to the City of Houston for the enlargement of wastewater treatment facilities at the Northwest Wastewater Treatment Facility Site from the existing 4 mgd. capacity to 12 mgd. The enlarged plant will provide secondary biological treatment capable of serving the 1990 estimated population of 90,000 persons. Sludge will be conveyed to the Northwest Regional Sludge Treatment Plant where it will be processed for use as fertilizer. Adverse impacts of the action include increases in noise levels and occasional odors. (ELR Order No. 41546.)

#### DEPARTMENT OF HUD

Contact: Mr. Richard H. Brown, Acting Director, Office of Community and Environmental Standards, Room 7200, 451 7th Street SW., Washington, D.C. 20410, (202) 755-5360.

#### Final

Lock Haven Urban Renewal, Clinton County, Pennsylvania, October 9: The statement refers to an urban renewal project for the City of Lock Haven, in order to compensate for damage caused by Tropical Storm Agnes in 1972. The project will encompass 193 acres of property. A total of 379 buildings

are to be cleared in the project area; 183 buildings are scheduled for rehabilitation. There will be construction disruption from the project. (ELR Order No. 41543.)

#### DEPARTMENT OF TRANSPORTATION

Contact: Mr. Martin Convisser, Director, Office of Environmental Quality, 400 7th Street SW., Washington, D.C. 20590, (202) 420-4357.

#### FEDERAL AVIATION ADMINISTRATION

#### Draft

Cassville Municipal Airport, Barry County, Missouri, October 8: The statement refers to the continued development of the Cassville Municipal Airport in Barry County, Missouri. The project consists of acquisition of approximately 90 acres of land, construction of a runway, and construction of a turnaround, taxiway and apron. The enlarged facility will cause slight increases in air and noise pollution. (ELR Order No. 41536.)

#### Final

Andalusia-Opp Airport, Covington County, Alabama, October 8: The statement refers to the proposed development of the Andalusia-Opp Airport in Covington County. The project involves construction of a runway, taxiways, and aircraft parking aprons; installation of lighting, wind cone, segmented circle, rotating beacon, and visual approach slope indicator; and acquisition of 100 acres of land for runway construction. There will be increased levels of air and noise pollution due to the expanded airport operations. There will also be temporary adverse effects normally associated with construction (55 pages). Comments made by: EPA, DOI, DOT, USDA, state and local agencies. (ELR Order No. 41537.)

Thomas C. Russell Field, Alexander City, Tallapoosa County, Alabama, October 9: The statement refers to a master planning study of Thomas C. Russell Field in Alexander City. The study calls for three stage development of the airport with completion in 1992. Stage I (1972-1977) consists of extension of a runway, construction of a partial parallel taxiway, extension of the lighting system, installation of a lighted wind cone, segmented circle, rotating beacon and visual approach slope indicator. Adverse impact will be an increase in the levels of air and noise pollution (47 pages). Comments made by: EPA, DOI, DOT, USDA, State and local agencies. (ELR Order No. 41542.)

#### FEDERAL HIGHWAY ADMINISTRATION

#### Draft

Salt Lake Boulevard, Honolulu, Hawaii, October 7: The statement refers to the improvement of Salt Lake Boulevard from the intersection of the future Halawa Heights Road to its intersection with Puuloa Road, a length of approximately 2.9 miles. There will be temporary negative impacts normally associated with road construction (52 pages). (ELR Order No. 41533.)

U.S. Rte. 6, Barnstable County, Massachusetts, October 10: The statement refers to the proposed construction of a 13-mile two-lane eastbound roadway to augment U.S. 6 in the towns of Dennis, Harwick, Brewster, and Orleans, Barnstable County. Adverse impacts are the use of 94 additional acres of land, displacement of 1 home, loss of wetlands, and increased noise levels. (ELR Order No. 41553.)

Park Avenue West, Mansfield, Richland County, Ohio, October 9: The statement refers to the proposed widening and resurfacing of Park Avenue West from four 10-ft. lanes to five 11-ft. lanes and provide an adequate traffic signal system between

Trimble Road and Bowman Street in the city of Mansfield. The project length is 1.558 miles. Adverse impacts are the removal of trees and other vegetation, slight soil erosion and siltation, and the displacement of one office. A 4(f) determination is necessary concerning South Park and Middle Park (83 pages). (ELR Order No. 41541.)

U.S. 60, Diamond to Hugheston, Kanawha County, West Virginia, October 7: The statement discusses the proposed reconstruction of U.S. 60 from a 2-lane to a 4-lane highway from Diamond to Hugheston. The proposed facility is 9 miles long and parallels the Kanawha River in Kanawha County. There will be minor pollution effects resulting from construction. Also acquisition of additional right-of-way will require the displacement of varying number of families and businesses depending on which of three alternatives is chosen. (ELR Order No. 41529.)

#### Final

F.A.S. 17, Tuscaloosa County, Alabama, October 9: The proposed project is the construction of 2.18 miles of F.A.S. Route 17. The 4-lane facility will displace 10 dwellings, (27 people) and 3 businesses. Total land acquisition for the project will be 54 acres. Increases in noise and air pollution will occur (44 pages). Comments made by: EPA, DOI, HUD, State and local agencies. (ELR Order No. 41540.)

Gallagher-Hess One-Way St., and Hess Reconstruction, Saginaw County, Michigan, October 11: The statement refers to the corridor-alignment and preliminary design phase of the proposed reconstruction of Hess Avenue, and the implementation of a Gallagher-Hess One-Way Street System in the city of Saginaw. The total project length from South Washington Avenue to East Genesee Avenue is approximately 2.3 miles. Adverse impacts include increased noise and air pollution, possible disruption and reduction of groundwater levels and flows, and the displacement of families and residences. The number of displacements will depend on the alternative chosen (86 pages). Comments made by: HUD, DOI, COE, USDA, EPA, State and local agencies. (ELR Order No. 41551.)

SR 34, Miner and Lake Counties, South Dakota, October 7: The statement refers to the construction of SR 34, a proposed 4-lane highway, from the west U.S. 81, SD 34 junction in Madison. Adverse impacts are the loss of approximately 400 acres of land, and channel sculpturing (16 pages) (47 pages). Comments made by: USDA, DOI, EPA, State agencies. (ELR Order No. 41531.)

I-820, Tarrant County, Texas, October 11: The statement refers to the construction of I-820 in the northwest portion of Tarrant County and within the cities of White Settlement, Lake Worth, and Forth Worth. The highway will be a basic six-lane freeway having controlled access and continuous frontage roads for most of its entire 13.5 mile length. Approximately 800 acres are to be used as right-of-way. Adverse impacts are: the displacement of wildlife; the conversion of grazing and urban open lands to permanently paved roadways; and increases in air, water, and noise pollution (58 pages). Comments made by: USDA, HEW, EPA, State agencies. (ELR Order No. 41554.)

County Trunk Highway "K", Vernon County, Wisconsin, October 10: Proposed is the replacement of two narrow bridges and the reconstruction and relocation of a rural highway along existing C.T.H. "K". Project length is 1.2 miles. Eleven acres of marshy pasture land will be acquired for right-of-way; 20 to 25 trees will be removed (33 pages). Comments made by: USDA, DOI, EPA, COE, State and local agencies. (ELR Order No. 41549.)

#### U.S. COAST GUARD

##### Draft

Proposed Station Creek Bridge, Beaufort County, South Carolina, October 10: Proposed is the approval of the location and plans for a fix highway bridge connecting St. Helena Island to a proposed residential community on presently uninhabited St. Phillips Island. Implementation of the overall project will result in: the conversion of 1,200 acres of wild forest to a man-dominated ecosystem (3,633 permanent residents); the introduction of automobile traffic into the new areas; the removal of 737 acres of mature maritime forest; the conversion of 23 acres of marshland to other uses; and the introduction of people and property into an area exposed to a significant risk of severe storm or hurricane flooding (60 pages). (ELR Order No. 41547.)

#### TREASURY DEPARTMENT

Contact: Anthony V. DiSilvestre, Office of Management and Organization, Department of the Treasury, Room 4406, Washington, D.C. 20220, (202) 964-2463—184-2463.

##### Draft

Additional Facilities, Bureau of Printing, District of Columbia, October 9: The statement refers to proposed legislation which would authorize the construction of additional facilities for use by the Bureau of Printing and Engraving. The 1,700,000 sq. foot, multi-story structure would be contiguous to the existing facilities in southwest Washington, D.C. There will be adverse impacts due to construction disruption. (28 pages). (ELR Order No. 41545.)

GARY L. WIDMAN,  
General Counsel.

[FR Doc.74-24329 Filed 10-17-74;8:45 am]

### DELAWARE RIVER BASIN COMMISSION

#### CERTAIN CATEGORIES OF PROJECT REVIEW APPLICATIONS

##### Public Hearing

Notice is hereby given that the Delaware River Basin Commission will hold a public hearing on Wednesday, October 30, 1974, commencing at 2 p.m. The meeting will be held in the Trenton Times Community Room, 500 Perry Street, Trenton, N.J. (exit at Perry Street from U.S. Route 1 Freeway in Trenton). The subjects of the hearing will be as follows:

A. A proposal to amend the Commission's rules of practice and procedure to delegate to the Executive Director authority to issue docket decisions on behalf of the Commission in regard to certain categories of project review applications. The Executive Director would exercise this authority only for applications submitted under section 3.8 of the Compact. Project applications requiring amendment to the Comprehensive Plan will be acted upon directly by the Commission as in the past. This amendment is intended to expedite processing and action upon project review applications. The amendment is proposed to be made by deleting sections 2-3.10 and 2-3.11 and inserting in lieu thereof new sections 2-3.10 and 2-3.11 to read as follows:

2-3.10. *Action of Executive Director in name of Commission.* (a) The Executive

Director shall give public notice of all applications received for project review under section 3.8 of the Compact. He shall review each such application and prepare a proposed staff docket decision, including specific findings and conclusions as required for action under section 3.8 of the Compact. Copies of the proposed docket decision shall be made available at the Commission's headquarters for distribution to any person upon request. The Executive Director shall then:

(i) Serve a copy of the proposed docket decision upon the applicant by certified mail;

(ii) Furnish a copy of such proposed docket decision to each commissioner; and

(iii) Publish notice of his intention to act, in accordance with paragraph (d) hereof.

(b) If the Executive Director receives any objection to the proposed action he shall determine whether the objection is substantial, and shall respond in writing to each objector stating his determination. Whenever he determines a filed objection is substantial, the Executive Director shall:

(i) In his discretion, revise, republish, and reconsider the proposed docket decision, in accordance with the procedure required above; or

(ii) Refer the proposed docket decision and the filed objections to the Commission, together with his recommendations for Commission consideration, which may include a recommendation for an adjudicatory hearing.

(c) (i) Whenever the Executive Director does not receive any objection to the proposed docket decision within the time limited by paragraph (d) or whenever he finds and determines that such objections as have been received within the time limited by paragraph (d) are not substantial, except where the docket decision includes Comprehensive Plan action, he may issue the proposed docket decision on behalf and in the name of the Commission.

(ii) Whenever the proposed docket decision includes Comprehensive Plan action, the Executive Director shall refer it to the Commission, together with any filed objections, for public hearing and action pursuant to the Compact and Rules as otherwise provided.

(d) Within twenty-one (21) days after the date of publication required by paragraph (a), any interested person or organization may file an objection to the proposed docket decision. Notice of the intention of the Executive Director to act upon a proposed docket decision shall be published by the Secretary in such manner as, in the particular case, will be reasonably calculated to bring it to the attention of interested citizens, public interest groups and public officials in the general area affected. Such notice shall contain a brief description of the project sufficient for identification of its nature and location, a notice that copies of the proposed docket decision may be ob-

tained by any interested person upon request from the Commission (25 State Police Drive, Trenton, N.J., telephone 609-883-9500) and a notice that any person may file a specific and detailed objection to the project within twenty-one (21) days after the date of publication.

(e) An objection filed pursuant to this section shall be in writing, in duplicate, and shall state specifically and in detail the alleged errors in the proposed docket decision. It should include pertinent supporting documentation. No person may be heard in opposition to an application except on objection so filed, except for good cause shown and upon unanimous vote of the Commission.

(f) Any person deeming himself aggrieved by a docket decision by the Executive Director under this section or by his determination that a timely filed objection thereto was not substantial, may seek a review thereof by appeal to the Commission. An appeal may be taken by an applicant or an objector within 10 days after the applicant, or objector, as the case may be, receives notice of the Executive Director's action upon the application or upon a filed objection. The notice of appeal shall be filed with the Secretary and shall state the name of the applicant, the docket number and, specifically and in detail, the alleged error of the Executive Director. The Secretary shall cause any appeal to be placed upon the Commission's agenda for its next regular meeting.

2-3.11. *Hearing on objections.* (a) Prior to each hearing of an appeal, the Executive Director shall cause to be prepared, and shall circulate to the Commission and all interested parties known to him, a list of the issues which, in his judgment, are raised by the objections to be heard.

(b) Upon the hearing of the appeal, the Commission will receive testimony on behalf of the objectors and the applicant. In the event substantial issues of fact or of law develop in such hearing and they cannot be resolved by stipulation of the interested parties, the Commission will:

(i) Defer decision and schedule the matter for an adjudicatory hearing to be held pursuant to the rules of practice and procedure; or

(ii) Upon a waiver of an adjudicatory hearing by the interested parties as to any issue, the Commission will decide the issue on the weight of credible testimony before it and staff investigations as directed by the Commission.

B. A proposal to amend the Commission's rules of practice and procedure to provide that the costs of adjudicatory hearings shall be borne by the agency applying for project approval from the Commission. The proposed amendment would add a new section 2-6.5.1 to read as follows:

2-6.5.1 *Assessment of Costs.* (a) Whenever an adjudicatory hearing is required, the costs thereof, as herein defined, shall be assessed by the hearing

officer to the applicant. For the purposes of this section costs include the per diem charges, if any, incurred by the Commission to an independent hearing examiner and to expert consultants reasonably necessary in the matter.

Alternate 1: And the direct charges for Commission staff allocated to actual participation in the hearing or appeal and in preparation therefor.

Alternate 2: Omit alternate 1.

(b) Upon the scheduling of a matter for adjudicatory hearing, the Secretary shall furnish to the applicant a reasonable estimate of the costs to be incurred under this section. The applicant or the appellant, as the case may be, shall thereupon furnish security for such costs either by cash deposit or by a surety bond of a corporate surety authorized to do business in a signatory state.

C. Applications for approval of the projects listed below. The Commission will consider these applications as proposed amendments to the Comprehensive Plan pursuant to Article 11 of the Compact, and/or as project approvals pursuant to section 3.8 of the Compact.

1. *Pocono International Raceway, Inc.* Modification of the sewage treatment plant at the raceway in Tunkhannock Township, Monroe County, Pa. The project provides for disposal of sewage treatment plant effluent by spray irrigation after treatment to remove 85 percent of BOD<sub>5</sub> and 90 percent of suspended solids.

2. *Warrington Township Municipal Authority.* Phases II and III of the Little Neshaminy Interceptor sewer project serving Warrington Township, Bucks County, and Montgomery and Horsham Townships, Montgomery County, Pa. The interceptor and pumping station will have capacity to convey a future (year 2010) sewage flow of about 8.4 million gallons per day to the expanded Warminster Township Municipal Authority sewage treatment plant. Treated effluent will discharge to Little Neshaminy Creek.

3. *Hatboro Borough Authority.* A well water supply project to augment public water supplies in Upper Moreland and Horsham Townships and Hatboro Borough, Montgomery County, Pa. Two new wells (Nos. 19 and 21) will be developed to produce a combined yield of 242 gallons per minute.

4. *Borough of Waymart.* A sewage treatment project to serve the Borough of Waymart and Camp Ladoro, Wayne County, Pa. The facility will provide removal of 93 percent of BOD<sub>5</sub> and 96 percent of suspended solids from a sewage flow of 210,000 gallons per day. Treated effluent will discharge to Van Auken Creek, a tributary of the Lackawaxen River.

5. *Village of Deposit.* A sewage treatment plant in the Village of Deposit, Broome, and Delaware Counties, N.Y. The treatment plant will provide removal of 90 percent of BOD<sub>5</sub> and suspended solids from a sewage flow of 400,000 gallons per day. Treated effluent will discharge to the West Branch of the Delaware River.

6. *City of Burlington.* A project involving construction of a bulkhead in the City of Burlington, Burlington County, N.J. Earth will be filled in behind the bulkhead to create a riverfront park.

7. *Jackson Township Municipal Utilities Authority.* A well water supply project to provide water supplies to the Great Adventure amusement complex in Jackson Town-

ship, Ocean County, N.J. Ten wells will be utilized at an average rate not to exceed 317,000 gallons per day during any month.

8. *Ewing-Laurence Sewerage Authority.* Expansion of the Authority's sewage treatment plant in Lawrence Township, Mercer County, N.J. About 80 percent of BOD<sub>5</sub> and suspended solids will be removed from a sewage flow of 11 million gallons per day. Treated effluent will discharge to the Assumpink Creek.

9. *Quaker Chemical Corp.* An industrial cooling water discharge at the company's plant in Philadelphia, Pa. About 184,000 gallons per day of cooling water will discharge to the Delaware River. Boiler blowdown and softener backwash will be diverted to municipal sewers.

10. *Layne Investment Corp.* A project to fill a 65-acre borrow pit adjacent to Darby Creek in Tinticum Township, Delaware County, Pa. The fill will raise the elevation of land above high tides in order to provide an area for commercial development.

11. *Excelsior Brass Works.* An industrial wastewater discharge at the company's plant in Malden Creek Township, Berks County, Pa. About 7,000 gallons per day of process and cooling water wastes will discharge to Willow Creek in the Schuylkill River Basin after treatment.

12. *Rodale Manufacturing Co., Inc.* An industrial cooling water discharge at the company's plant in the Borough of Emmaus, Lehigh County, Pa. About 50,000 gallons per day of cooling water will discharge to Leibert Creek in the Lehigh River Basin.

13. *J. G. Alterboom Nurseries, Inc.* A groundwater withdrawal at the subject nurseries in Lawrence Township, Cumberland County, N.J. A well will be utilized at an average rate not to exceed 585,000 gallons per day during any month. Water will be applied for irrigation purposes.

14. *Mantua Properties, Inc.* Docking facilities at the company's property in Thorofare, Gloucester County, N.J. The facility will serve as a terminal for navigation use by the company.

15. *Hoffman-LaRoche, Inc.* Replacement wells at the company's manufacturing plant in White Township, Warren County, N.J. The facility is to be limited to a maximum withdrawal of 4.3 million gallons per day from all its wells.

16. *Sun Oil Co.* A project to extend docking facilities at the company's refinery near Marcus Hook, Pa. The project will involve dredging of 55,000 cubic yards of material from the adjacent areas in the Delaware River in the States of Delaware and Pennsylvania.

17. *Essex Chemical Corp.* A surface water withdrawal at the company's industrial facility in Paulsboro, Gloucester County, N.J. A withdrawal of approximately 2.8 million gallons per day will be made from the Delaware River.

18. *Broadscope, Inc.* An earthfill dam to create a 183-acre lake at the Towamensing Trails vacation home development in Penn Forest Township, Carbon County, Pa. The dam would extend across Wolf Run.

19. *Mobil Oil Corp.* Expansion and modernization of the company's refinery in Paulsboro, Gloucester County, N.J. Capacity of the plant will be increased to 250,000 barrels per day and will have a variety of impacts on adjacent water resources. Dredging and dock improvements, on-shore oil storage facilities, and a surface water withdrawal from the Delaware River in the amount of 13.4 million gallons per day are involved.

Documents relating to the items on this hearing notice may be examined at the Commission's offices. Persons wishing to testify

are requested to notify the Secretary prior to the hearing.

W. BRINTON WHITALL,  
Secretary.

OCTOBER 10, 1974.

[FR Doc.74-24271 Filed 10-17-74;8:45 am]

## ENVIRONMENTAL PROTECTION AGENCY

[FRL 281-4]

### ENVIRONMENTAL IMPACT STATEMENTS AND OTHER ACTIONS IMPACTING THE ENVIRONMENT

#### Availability of EPA Comments

Pursuant to the requirements of section 102(2)(C) of the National Environmental Policy Act of 1969, and section 309 of the Clean Air Act, as amended, the Environmental Protection Agency (EPA) has reviewed and commented in writing on Federal agency actions impacting the environment contained in the following appendices during the period of September 16, 1974, and September 30, 1974.

Appendix I contains a listing of draft environmental impact statements reviewed and commented upon in writing during this review period. The list includes the Federal agency responsible for the statement, the number and title of the statement, the classification of the nature of EPA's comments as defined in Appendix II, and the EPA source for copies of the comments as set forth in Appendix V.

Appendix II contains the definitions of the classifications of EPA's comments on the draft environmental impact statements as set forth in Appendix I.

Appendix III contains a listing of final environmental impact statements reviewed and commented upon in writing during this reviewing period. The listing will include the Federal agency responsible for the statement, the number and title of the statement, a summary of the nature of EPA's comments, and the EPA source for copies of the comments as set forth in Appendix V.

Appendix IV contains a listing of proposed Federal agency regulations, legislation proposed by Federal agencies, and any other proposed actions reviewed and commented upon in writing pursuant to section 309(a) of the Clean Air Act, as amended, during the referenced reviewing period. The listing includes the Federal agency responsible for the proposed action, the title of the action, a summary of the nature of EPA's comments, and the source for copies of the comments as set forth in Appendix V.

Appendix V contains a listing of the names and addresses of the sources for copies of EPA comments listed in Appendices I, III, and IV.

Copies of the EPA Manual setting forth the policies and procedures for EPA's review of agency actions may be obtained by writing the Public Inquiries Branch, Office of Public Affairs, Environmental Protection Agency, Washington, D.C. 20460. Copies of the draft and final environmental impact statements refer-

enced herein are available from the originating Federal department or agency.

J. M. McCABE,  
Acting Director,  
Office of Federal Activities.

Dated: October 10, 1974.

#### APPENDIX II

#### DEFINITION OF CODES FOR THE GENERAL NATURE OF EPA COMMENTS

##### Environmental Impact of the Action

##### LO—Lack of Objection

EPA has no objections to the proposed action as described in the draft impact statement; or suggests only minor changes in their proposed action.

##### ER—Environmental Reservations

EPA has reservations concerning the environmental effects of certain aspects

of the proposed action. EPA believes that further study of suggested alternatives or modifications is required and has asked the originating Federal agency to reassess these impacts.

##### EU—Environmentally Unsatisfactory

EPA believes that the proposed action is unsatisfactory because of its potentially harmful effect on the environment. Furthermore, the Agency believes that the potential safeguards which might be utilized may not adequately protect the environment from hazards arising from this action. The Agency recommends that alternatives to the action be analyzed further (including the possibility of no action at all).

APPENDIX I.—Draft environmental impact statements for which comments were issued between Sept. 16, 1974, and Sept. 30, 1974

Identifying No.	Title	General nature of comments	Source for copies of comments
Department of Agriculture:			
D-AFS-J65003-MT.....	Proposed management plan for the Lake Five planning unit on Flat Head National Forest, Mont.	LO-1	I
D-AFS-L61003-ID.....	Proposed land use plan, Mountain Home planning unit, Boise National Forest, Idaho.	LO-2	K
D-SCS-A36411-WY.....	Spring Canyon watershed project, Goshute County, Wyo.	LO-1	I
D-REA-F07001-WI.....	Alma unit No. 6 and related 161 kV transmission lines, Alma, Buffalo County, Wis.	ER-2	F
Department of Commerce:			
D-DOC-C80001-NY.....	S. & S. Corrugated Paper Machinery Co., New York City, N.Y.	LO-2	O
Corps of Engineers:			
D-COE-A32515-FL.....	Permit to excavate nine earthen plugs separating existing canals from access to Florida Intracoastal Waterway and installation of bulkhead, Fla.	ER-2	E
D-COE-D07001-WV.....	Pleasant Power Station, units No. 1 and 2, Ohio River, Willow Island, Pleasant County, W. Va.	ER-2	D
D-COE-D36003-PA.....	Chartiers Creek local flood protection project, Chartiers Creek Basin, Pa.	ER-1	D
D-COE-E36001-FL.....	Hendry County, central and southern Florida project, flood control and water supply, Fla.	ER-2	E
D-COE-E36002-FL.....	South Dade conveyance canals and east coast buck-pumping, central and southern Florida project, Fla.	ER-2	E
D-COE-F36001-MI.....	St. Joseph Harbor shore damage, Berrien County, Mich.	LO-2	F
D-COE-F36003-IL.....	Beach erosion control and South Boulevard Beach, Evanston, Cook County, Ill.	LO-2	F
D-COE-F32002-MI.....	Harbor facilities, Tawas Bay Harbor, East Tawas, Leosco County, Mich.	ER-2	F
D-COE-F35001-MI.....	Confined disposal facility Bolles Harbor, Monroe County, Mich.	LO-2	F
D-COE-G34001-OK.....	Operation and maintenance program for Keystone Lake, Arkansas River, Okla.	LO-2	G
D-COE-H34000-KS.....	Grove Lake, Soldier Creek, Kans.	3	H
D-COE-H36002-KS.....	Gypsum, small flood control project, Kans.	LO-2	H
Department of Defense:			
D-DOD-A84003-ME.....	Over-the-horizon radar system, Somerset and Washington Counties, Maine.	ER-2	D
General Services Administration:			
D-GSA-E81001-CA.....	Proposed disposal of Oxnard Air Force Base, Camarillo, Ventura County, Calif.	ER-2	J
D-GSA-A60100-FL.....	Disposal of a portion of former Richmond Naval Air Station, Richmond, Dade County, Fla.	LO-2	E
Department of Housing and Urban Development:			
D-HUD-A85019-NY.....	Water Mill Lane project, Great Neck, Nassau County, N.Y.	3	O
D-HUD-G85001-TX.....	The proposed "Colony" subdivision, Denton County, Tex.	3	G
D-HUD-A61246-GA.....	Lake Alma development, recreation, Alma, Ga.	ER-2	E
Department of Interior:			
D-BLM-A01026-00.....	Proposed coal leasing program.	3	I
D-IBR-G07001-NM.....	El Paso coal gasification project, N. Mex.	ER-1	G
D-IBR-G28002-NM.....	Eastern New Mexico water supply project, N. Mex.	ER-2	G
D-NPS-J61001-UT.....	Proposed Wilderness, Arches National Park, Utah.	LO-1	I
D-NPS-J61002-UT.....	Proposed Wilderness, Canyon Lands National Park, Utah.	LO-1	I
D-NPS-J61003-UT.....	Proposed Wilderness, Capitol Reef National Park, Utah.	LO-1	I
D-NPS-A61253-SC.....	Cowpens National Battlefield, master plan and development concept plan, Cherokee County, S.C.	LO-2	E
Department of Transportation:			
D-CGD-G32002-LA.....	Vessel traffic system, New Orleans, La.	LO-2	G
D-FAA-H51001-LA.....	San City Municipal Airport, San City, Iowa.	LO-2	H
D-FAA-H51002-MO.....	Nevada Municipal Airport, Nevada, Mo.	LO-2	H
D-FAA-H51003-IA.....	Boone Municipal Airport, Iowa.	LO-2	H
D-FHW-A41192-KS.....	K-7, Johnson and Wyandotte Counties, Kans.	LO-1	H
D-FHW-A41214-FL.....	Escambia County, State Road 95-US 29, Fla.	ER-2	E
D-FHW-C40002-PR.....	Baldorioty de Castro Expressway, P.R.	ER-2	C
D-FHW-C40003-NY.....	Wellsville connector, Wellsville, N.Y.	3	C
D-FHW-C40004-PR.....	Route 111, Moca-San Sebastian, P.R.	3	C

APPENDIX I.—Draft environmental impact statements for which comments were issued between Sept. 16, 1974, and Sept. 30, 1974

Identifying No.	Title	General nature of comments	Source for copies of comments
D-FHW-D40001-PA.....	LR 1101, William Penn Highway, Westmoreland County, Pa.	ER-2	D
D-FHW-E40002-TN.....	SR-137 from WR-91 (Market St.) to south city limits of Johnson City, Washington County, Tenn.	LO-2	E
D-FHW-F40006-WI.....	Viola-Lafarge Road, State Highway 131, Richland and Vernon Counties, Wis.	LO-2	F
D-FHW-F40008-WI.....	Onalaska, State Highway 93 Road, LaCrosse County, Wis.	LO-2	F
D-FHW-G40002-TX.....	US 51 from Loop 375 in northeast El Paso to Texas-New Mexico State line at Newman, El Paso County, Tex.	LO-2	G
D-FHW-G40006-LA.....	White Castle-Plaquemine Highway, State Route LA-1, Louisiana.	LO-2	G
D-FHW-G40011-TX.....	US 81 from 1 mile east to 1 mile northwest of Beece, Nolan County, Tex.	LO-2	G
D-FHW-H40004-KS.....	US 51, Kingman and Pratt Counties, Kans.	3	H
D-FHW-J40002-ND.....	Improvement of US 2 from Ray to Berthold, Ward, Williams, and Mountrail Counties, N. Dak.	ER-1	I
D-FHW-K40002-CA.....	Simi Valley-San Fernando Valley, Route 18 freeway between Desoto Ave. and Balboa Blvd., Los Angeles County, Calif.	ER-2	J
D-FHW-L40005-WA.....	Boundary to international boundary, Stevens County, Wash.	LO-1	K
D-FHW-A42278-NY.....	City of Kingston, north-south arterial, North Broadway to Route 32, Ulster County, N.Y.	ER-3	C
D-FAA-A51639-TN.....	Paris Landing State Park Airport, Paris Landing, Tenn.	LO-2	E
D-FHW-A42280-KY.....	Calloway County, US 611, Murray-Benton Road, Murray, Ky.	LO-2	E
D-FHW-A42281-KY.....	Graves County, US 45, Paducah Road, Mayfield, Ky.	LO-2	E
D-FHW-A42283-MT.....	Bridge study, northwest of Winifred, Mont.	LO-1	I
D-FHW-A42285-FL.....	Broward County, State Road 81, Fla.	LO-1	E
Atomic Energy Commission:			
D-AEC-A06141-FL.....	Manufacture of floating nuclear power plants, offshore power systems, docket No. STN 50-137, Blount Island, Jacksonville, Fla.	ER-2	E
D-AEC-A06142-AL.....	Joseph M. Farley Nuclear Plant, units 1 and 2, Chattahoochee River, Houston County, Ala., Docket Nos. 50-318 and 50-324.	ER-2	A
Water Resources Council:			
D-WRC-E39002-00.....	Pacific Southwest analytical summary report on water and land resources, Arizona, California, Colorado, New Mexico, Nevada, Utah, and Wyoming.	3	A

## APPENDIX II

## DEFINITION OF CODES FOR THE GENERAL NATURE OF EPA COMMENTS

*Environmental Impact of the Action***LO—Lack of Objection**

EPA has no objections to the proposed action as described in the draft impact statement; or suggests only minor changes in the proposed action.

**ER—Environmental Reservations**

EPA has reservations concerning the environmental effects of certain aspects of the proposed action. EPA believes that further study of suggested alternatives or modifications is required and has asked the originating Federal agency to reassess these impacts.

**EU—Environmentally Unsatisfactory**

EPA believes that the proposed action is unsatisfactory because of its potentially harmful effect on the environment. Furthermore, the Agency believes that the potential safeguards which might be utilized may not adequately protect the environment from hazards arising from this action. The Agency recommends that alternatives to the action be analyzed further (including the possibility of no action at all).

*Adequacy of the Impact Statement***Category 1—Adequate**

The draft impact statement adequately sets forth the environmental impact of the proposed project or action as well as alternatives reasonably available to the project or action.

**Category 2—Insufficient information**

EPA believes that the draft impact statement does not contain sufficient information to assess fully the environmental impact of the proposed project or action. However, from the information submitted, the Agency is able to make a preliminary determination of the impact on the environment. EPA has requested that the originator provide the information that was not included in the draft statement.

**Category 3—Inadequate**

EPA believes that the draft impact statement does not adequately assess the environmental impact of the proposed project or action, or that the statement inadequately analyzes reasonable available alternatives. The Agency has requested more information and analysis concerning the potential environmental hazards and has asked that substantial revision be made to the impact statement.

## NOTICES

APPENDIX III.—Final environmental impact statements for which comments were issued between Sept. 10, 1974, and Sept. 30, 1974

Identifying No.	Title	General nature of comments	Source for copies of comments
<b>Department of agriculture</b>			
F-AFS-A65072-CA	Proposed Klamath National Forest timber management plan, Siskiyou County, Calif.	EPA had no objections to the project as proposed.	J
<b>Corps of Engineers</b>			
F-COE-A25010-OH	Cleveland Harbor operations and maintenance, Cuyahoga County, Ohio.	EPA expressed opposition to the disposal of polluted dredged spoil in open waters of Lake Erie. While the alternatives section of the final statement suggests that acceptable alternatives exist and will be proposed instead of open lake disposal, this was not reflected in the overall statement. EPA requested confirmation of the intended use of an acceptable alternative.	F
F-COE-A32458-02	Lock and Dam No. 26, Mississippi River, Missouri and Illinois.	EPA expressed reservations concerning the environmental impacts of this proposed project because of inadequate consideration of the adverse effects of dredging and dredge spoil disposal on water quality. The agency pointed out that concentrations of cadmium, mercury, and lead may increase during and after project construction. EPA's comments also expressed concern over the failure of the final impact statement to adequately assess the alternative forms of transportation.	H
F-COE-A34133-CA	Port Hueneume Harbor, Ventura County, Calif.	EPA had no objections to the project as proposed.	J
F-COE-A35004-WI	Maintenance dredging operations and combined diked disposal area for Kenosha Harbor and Racine Harbor, Wis.	do	F
F-COE-A36329-IN	Brookville reservoir, east fork Whitewater River, Franklin and Union Counties, Ind.	EPA anticipates water quality degradation resulting from the proposed project. Until the COE commits itself to instituting corrective measures, EPA has environmental reservations about the project.	F
F-COE-A21023-OH	Confined disposal facility at Toledo Harbor, Lucas County, Ohio.	EPA noted that while the project has substantially changed in size (from 400 acres to 242 acres), the general site location has remained the same. Moreover, EPA expressed concerns related to the treatment efficiency of the overflow weir and its compliance with water quality standards and the proposed mixing of sewage treatment plant effluent with the Toledo Edison thermal discharge in the project area.	F
<b>General Services Administration:</b>			
F-GSA-A81184-MI	Federal office building in Ann Arbor, Mich.	EPA had no objections to the project as proposed.	F
<b>Department of Labor:</b>			
RF-LAB-A89056-00	Proposed regulations to limit exposure of workers to vinyl chloride.	EPA had no objections to the proposed regulation.	A
<b>Department of Interior:</b>			
F-BLM-A02035-LA	Proposed Outer Continental Shelf oil and gas lease sale No. 36, offshore, Louisiana.	EPA found that the proposed action engenders environmental reservations. Of chief concern to EPA is the offering of 33 high hazard tracts, especially the 10 deepwater tracts and 15 tracts located in areas of unstable bottom sediments, all of which are relatively close to productive marshland areas. EPA also takes issue with the proven reliability of subsea production systems since the only means of reestablishing control of a well flowing out of control is the drilling of a relief well. Finally EPA objects to the incomplete analysis given to the alternative of disposal of formation waters by reinjection.	A
F-SFW-A64024-WI	Proposed development, Horicon National Wildlife Refuge, Wis.	EPA had no objections to the project as proposed.	F
F8-IBR-K23001-CA	Draft supplement to final statement on Auburn-Tolsom south unit, American River Division, Central Valley project, Calif.	Without a firm commitment from the Bureau of Reclamation that operational procedures and project capability of the proposed unit, in conjunction with other future water projects in the Central Valley project area, are such to ensure maintenance of water quality standards, EPA continues to have environmental reservations with regard to the proposed project.	J
<b>Department of Transportation:</b>			
F-FAA-A51857-IN	Extension of Runway 9-27, land acquisition and road closure, Michiana Regional Airport, South Bend, Ind.	EPA had no objections to the project as proposed.	F
F-FHW-A40192-MO	Route 725, St. Louis County, Mo.	EPA believes the assessment of noise and air impacts are considered inadequate by present standards. The final statement was approved by FHWA in May 1972, but was not officially filed with CEQ until July 1974. It appears the noise levels will exceed the levels recommended by FPM 90-2 by approximately 10 dB(A). EPA believes noise attenuation measures should be incorporated into the project design.	H
F8-UMT-K54001-CA	Larkspur Ferry terminal of the Golden Gate ferry and bus service project, Calif.	EPA had no objections to the project as proposed.	J
F-FHW-A42013-WI	US 53 freeway from 3 miles north of Bloomer to the Washburn-Barron County line, Barron and Chippewa Counties, Wis.	do	F

APPENDIX IV.—Regulations, legislation and other Federal agency actions for which comments were tested between Sept. 16, 1974, and Sept. 30, 1974

Identifying No.	Title	General nature of comments	Source for copies of comments
Department of Agriculture: R-SCS-A60102-00...	7 CFR part 651, land rights, water rights, and construction permits, acquisition of interests.	In EPA's view the proposed regulations were generally adequate; however, several additions and modifications were suggested in an effort to strengthen the regulations from an environmental point of view.	A
Federal Energy Administration: R-FEA-A04005-00...	10 CFR part 211, allocation of old oil.	EPA supports the intentions of FEA in proposing this regulation, however it could make attainment of State air quality implementation plans somewhat more difficult at the margin. EPA suggested several alternative provisions for FEA's consideration.	A
R-FEA-A04005-00...	10 CFR part 212, mandatory petroleum regulations, computation of landed costs.	EPA believes that the formula for computing landed costs of nonreference crude oils should be revised to recognize the higher value of low-sulfur residual fuel oil. Such action we believe would be an incentive to the importation of low-sulfur crude as their transfer prices would more accurately reflect their higher value. The increased import of low-sulfur crude will significantly further the objectives of the clean air act.	A
Department of Interior: R-IGS-A02060-00...	Notices, OCS order No. 13, Gulf of Mexico area.	In general comments centered about the features of production measurement which aid in the detection and location of pipeline leaks.	A
R-IGS-A02061-00...	Notices, Alaska area, intention to develop OCS orders.	EPA pointed out that according to Council on Environmental Quality findings, OCS operations in the Gulf of Alaska would present a higher environmental risk than such developments in other OCS areas. EPA urged the Department of Interior to consider instead development of OCS orders for areas of least environmental risk at this time. Further recommendations related to consolidation of OCS requirements under the appropriate order title.	A

## APPENDIX V

[FRL 282-4]

## SOURCE FOR COPIES OF EPA COMMENTS

## CHEMAGRO DIVISION OF BAYCHEM CORP.

## Reextension of Temporary Tolerances

A. Director, Office of Public Affairs, Environmental Protection Agency, 401 M Street SW, Washington, D.C. 20460.

B. Director of Public Affairs, Region I, Room 2303, John F. Kennedy Federal Building, Boston, Massachusetts 02203.

C. Director of Public Affairs, Region II, Environmental Protection Agency, Room 847, 26 Federal Plaza, New York, New York 10007.

D. Director of Public Affairs, Region III, Environmental Protection Agency, Curtis Building, 6th and Walnut Streets, Philadelphia, Pennsylvania 19106.

E. Director of Public Affairs, Region IV, Environmental Protection Agency, Suite 300, 1421 Peachtree Street NE, Atlanta, Georgia 30309.

F. Director of Public Affairs, Region V, Environmental Protection Agency, 1 N. Wacker Drive, Chicago, Illinois 60606.

G. Director of Public Affairs, Region VI, Environmental Protection Agency, 1600 Patterson Street, Dallas, Texas 75201.

H. Director of Public Affairs, Region VII, Environmental Protection Agency, 1735 Baltimore Street, Kansas City, Missouri 64108.

I. Director of Public Affairs, Region VIII, Environmental Protection Agency, Lincoln Tower, Room 916, 1860 Lincoln Street, Denver, Colorado 80203.

J. Director of Public Affairs, Region IX, Environmental Protection Agency, 100 California Street, San Francisco, California 94111.

K. Director of Public Affairs, Region X, Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101.

[FR Doc.74-24079 Filed 10-17-74; 8:45 am]

tolerances are reextended is that the nematocide will be used in accordance with the temporary permit which is being issued concurrently and which provides for distribution under the Chemagro Division of Baychem Corp. name.

As reextended, these temporary tolerances expire September 25, 1975. Residues remaining in or on the above raw agricultural commodities after expiration of these tolerances will not be considered actionable if the pesticide is legally applied during the term and in accordance with provisions of the temporary permit/tolerances.

This action is taken pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 408(j), 68 Stat. 516; 21 U.S.C. 346a(j)), the authority transferred to the Administrator of the Environmental Protection Agency (35 FR 15623), and the authority delegated by the Administrator to the Deputy Assistant Administrator for Pesticide Programs (39 FR 18805).

Dated: October 11, 1974.

HENRY J. KOPF,  
Deputy Assistant Administrator  
for Pesticide Programs.

[FR Doc.74-24255 Filed 10-17-74; 8:45 am]

[FRL 276-3; OPP-32000/126]

# RECEIPT OF APPLICATIONS FOR PESTICIDE REGISTRATION DATA TO BE CONSIDERED IN SUPPORT OF APPLICATIONS

On November 19, 1973, the Environmental Protection Agency (EPA) published in the FEDERAL REGISTER (38 FR 31862) its interim policy with respect to the administration of section 3(c)(1)(D) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended. This policy provides that EPA will, upon receipt of every application for registration, publish in the FEDERAL REGISTER a notice containing the information shown below. The labeling furnished by the applicant will be available for examination at the Environmental Protection Agency, Room EB-37, East Tower, 401 M Street, SW., Washington, D.C. 20460.

On or before December 17, 1974, any person who (a) is or has been an applicant, (b) believes that data he developed and submitted to EPA on or after October 21, 1972, is being used to support an application described in this notice, (c) desires to assert a claim for compensation under section 3(c)(1)(D) for such use of his data, and (d) wishes to preserve his right to have the Administrator determine the amount of reasonable compensation to which he is entitled for such use of the data, must notify the Administrator and the applicant named in the notice in the FEDERAL REGISTER of his claim by certified mail. Notification to

the Administrator should be addressed to the Information Coordination Section, Technical Services Division (WH-569), Office of Pesticide Programs, 401 M Street, SW., Washington, D.C. 20460. Every such claimant must include, at a minimum, the information listed in the interim policy of November 19, 1973.

Applications submitted under 2(a) or 2(b) of the interim policy will be processed to completion in accordance with existing procedures. Applications submitted under 2(c) of the interim policy cannot be made final until the 60 day period has expired. If no claims are received within the 60 day period, the 2(c) application will be processed according to normal procedure. However, if claims are received within the 60 day period, the applicants against whom the claims are asserted will be advised of the alternatives available under the Act. No claims will be accepted for possible EPA adjudication which are received after December 17, 1974.

#### APPLICATIONS RECEIVED

EPA File Symbol 11501-RU. The Aquachem Co., Inc., 349 Greco Ave., Coral Gables FL 33148. POOL-CARD CHLORINE. Active Ingredients: Sodium Hypochlorite 10%. Method of Support: Application proceeds under 2(c) of interim policy.

EPA File Symbol 18972-A. Beaver Sales & Service, 2320 W. Melghan Blvd., Gadsden AL 35904. BEAVER 3D-DISINFECTANT DEODORANT AND DETERGENT. Active Ingredients: Alkyl (C14 90%, C12 5%, C16 5%) dimethyl dichlorobenzyl ammonium chloride 2.50%; Alkyl (C14 58%, C16 28%, C12 14%) dimethyl benzyl ammonium chloride 1.25%; Alkyl (C14 90%, C12 5%, C16 5%) dimethyl ethyl ammonium bromide 1.25%; Isopropanol 0.63%; Sodium carbonate 2.00%; Ethylenediamine-tetraacetic acid, tetrasodium salt 0.38%. Method of Support: Application proceeds under 2(c) of interim policy.

EPA File Symbol 5887-RNA. Black Leaf Products Co., 687 N. State St., Elgin IL 60120. BLACK LEAF WEED KILLER KILLS DANDELIONS AND WEEDS. Active Ingredients: Isocytylester of Silvex (2-(2,4,5-trichlorophenoxy) propionic acid) 4.94%; Isocytylester of 2,4-Dichlorophenoxy-acetic acid 15.94%. Method of Support: Application proceeds under 2(c) of interim policy.

EPA File Symbol 7299-L. The Brenco Corp., 704 N. First St., St. Louis, MO 63102. BRENCO 540 ALGAEICIDE BRIQUETTES. Active Ingredients: Sodium Pentachlorophenate 79%; Sodium Salts of other chlorophenols 11%. Method of Support: Application proceeds under 2(c) of interim policy.

EPA File Symbol 784-OT. Consolidated Chemical, Inc., 1470 So. Vandeventer, St. Louis MO 63110. KILLER INSECTICIDE SPRAY. Active Ingredients: (5-Benzyl-3-furyl)methyl 2,2-dimethyl-3-(2-methylpropenyl)cyclopropanecarboxylate 0.150%; Related compounds 0.020%; Aromatic petroleum hydrocarbons 0.199%; Petroleum distillate 99.625%. Method of Support: Application proceeds under 2(c) of interim policy.

EPA File Symbol 28003-L. D.H. & R. Co., Inc., PO Box 333, LaPorte IN 46350. HAPPY PATCH GRASSGRASS AND WEED PREVENTER. Active Ingredients: Dimethyl ester of tetrachloroterephthalic acid 2.50%. Method of Support: Application proceeds under 2(c) of interim policy.

EPA File Symbol 1598-EGG. FCX, Inc., PO Box 2410, Raleigh NC 27602. FCX 34.6% NEMATOCIDAL SOIL FUMIGANT GRANULES. Active Ingredients: 1,2-Dibromo-3-chloropropane 32.8%; Other halogenated C3 compounds 1.8%. Method of Support: Application proceeds under 2(c) of interim policy.

EPA Reg. No. 8901-1. Kocide Chemical Corp., 12701 Almedia Rd., Houston TX 77045. KOCIDE 101 WETTABLE POWDER AGRICULTURAL FUNGICIDE. Active Ingredients: Cupric Hydroxide 83%. Method of Support: Application proceeds under 2(c) of interim policy.

EPA File Symbol 7124-GE. Alden Leeds, Inc., 55 Jacobus Ave., South Kearny NJ 07032. NUGLO DRY GRANULAR ALGAEICIDE. Active Ingredients: Simazine (2-Chloro-4,6-bis(ethylamino)-s-triazine) 11%. Method of Support: Application proceeds under 2(c) of interim policy.

EPA File Symbol 3003-GL. Osmose Wood Preserving Co. of America, Inc., 980 Ellicott St., Buffalo NY 14209. OSMOSE K-33 (40%) WOOD PRESERVATIVE. Active Ingredients: Arsenic Pentoxide 18.0%; Copper Oxide 7.9%; Chromic Acid 14.1%. Method of Support: Application proceeds under 2(c) of interim policy.

EPA File Symbol 3008-GU. Osmose Wood Preserving Co. of America, Inc., 980 Ellicott St., Buffalo NY 14209. OSMOSE K-33 (72%) WOOD PRESERVATIVE. Active Ingredients: Arsenic Pentoxide 32.5%; Copper Oxide 14.1%; Chromic Acid 25.4%. Method of Support: Application proceeds under 2(c) of interim policy.

EPA File Symbol 432-LGT. S. B. Fenick & Co., A Unit of CPC International, Inc., 100 Church St., New York NY 10007. SBP-1382/BIOALLETHRIN CONCENTRATE 8-16 FOR AQUEOUS PRESSURIZED SPRAYS. Active Ingredients: (5-Benzyl-3-furyl)methyl 2,2-dimethyl-3-(2-methylpropenyl)cyclopropanecarboxylate 8.00%; Related compounds 1.09%; d-trans allethrin (allyl Homolog of Cinerin I) 16.00%; Related compounds 1.20%; Aromatic petroleum hydrocarbons 10.59%. Method of Support: Application proceeds under 2(c) of interim policy.

EPA Reg. No. 9779-142. Riverside Chemical Co., PO Box 171199, Memphis TN 38117. RIVERSIDE SODIUM CHLORATE DEFOLIANT-DESICCANT. Active Ingredients: Sodium Chlorate 28.2%. Method of Support: Application proceeds under 2(c) of interim policy.

EPA File Symbol 7257-U. Savol Bleach Co., PO Box 246, East Hartford CT 06108. SAVOL SWIMMING POOL ALGAEICIDE. Active Ingredients: Alkyl (C14 60%, C12 25%, C16 15%) Dimethyl Benzyl Ammonium Chloride 10%. Method of Support: Application proceeds under 2(c) of interim policy.

EPA File Symbol 11547-EO. Share Corp. PO Box 9, Brookfield WI 53005. SUPER AMMATE WEED & BRUSH CONTROL. Active Ingredients: Ammonium Sulfamate 48.4%. Method of Support: Application proceeds under 2(c) of interim policy.

EPA File Symbol 11474-RT. Sungro Chemicals, Inc., PO Box 24632, 3626 Medford Dr., Los Angeles CA 90033. SUNGRO A.M.S. WOODY BRUSH AND WEED KILLER-WEED AND GRASS CONTROL. Active Ingredients: Ammonium sulfamate 28%. Method of Support: Application proceeds under 2(c) of interim policy.

EPA File Symbol 998-RNO. Superior Chemical Co., 3942 Frankford Ave., Philadelphia PA 19124. SUPERIOR ORLAN 24E. Active Ingredients: Ronnel (O-O-dimethyl O-2,4,5-trichlorophenyl phosphorothiolate) 24%; Aromatic petroleum derivative solvent 68%. Method of Support: Application proceeds under 2(c) of interim policy.

EPA File Symbol 10825-0. Willight Chemical Corp., PO Box 254, Drew MS 38737. TOP DOG BRAND BARE STALK DEFOLIANT WITH FIRE RETARDANT. Active Ingredients: Sodium Chlorate 28.0%. Method of Support: Application proceeds under 2(c) of interim policy.

Dated: October 5, 1974.

JOHN B. RITCH, Jr.,  
Director,  
Registration Division.

[FR Doc.74-23707 Filed 10-17-74; 9:45 am]

[FRL 278-7; FIFRA Docket Nos. 145 etc.]

SHELL CHEMICAL CO. ET AL

Consolidated Aldrin/Dieldrin Hearing

On August 2, 1974, I issued my Notice of Intent to Suspend the registrations of certain pesticide products containing Aldrin and Dieldrin. After an adjudicatory hearing, the Chief Administrative Law Judge of this Agency on September 20, 1974, issued a recommended decision concerning the allegations contained in that Notice of Intent to Suspend. On October 1, 1974, I issued my Opinion and Order. The three documents are published herewith.

Dated: October 8, 1974.

RUSSELL E. TRAIN,  
Administrator.

[F.I.F.R.A. Dockets Nos. 145, etc.]

SHELL CHEMICAL CO. ET AL.

NOTICE OF INTENTION TO SUSPEND AND FINDINGS AS TO AN IMMINENT HAZARD

In the matter of Shell Chemical Company, et al., Registrants (Consolidated Aldrin/Dieldrin Hearing) F.I.F.R.A. Dockets Nos. 145 etc.

By this order, issued pursuant to section 6(c) of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended ("FIFRA"), I am hereby serving notice of my intent to suspend the registrations and prohibit the production for use of all pesticide products containing Aldrin or Dieldrin which are subject to and for which appeals were duly filed from the Aldrin/Dieldrin cancellation order issued by the Administrator of the Environmental Protection Agency on June 26, 1973.<sup>1</sup> This suspension order is effective within five days unless the registrants request an expedited hearing pursuant to section 6(c) (3), with the added provision that I am permitting, pursuant to section 15(b) (2), use or sale of existing formulated stocks of pesticides containing Aldrin or Dieldrin which are on hand as of the effective date of the suspension order. Such hearing, if requested, shall take no longer than 15 days from the commencement of the hearing, unless, for good cause shown I extend that time for no more than 5 additional days.

**Background.** The history of prior attempts to regulate the sale and use of Aldrin and

<sup>1</sup>In the matter of Shell Co., et al., I.F.R.A. Docket No. 145 etc., F.R., Vol. 39, No. 126, at p. 12904 (published June 29, 1972). For purposes of clarification, the result of a final order of suspension will be to prohibit the manufacture of Aldrin or Dieldrin for any use except for the three uses permitted by the June 26, 1973, order. Those three exempted uses are: Restricted termite use, the dipping of roots and tops of non-food plants and use in a total effluent-free mothproofing system.

Dieldrin is both lengthy and involved. The original petition for the cancellation and immediate suspension of all uses of Aldrin and Dieldrin was filed by the Environmental Defense Fund (EDF) on December 3, 1970. Shortly thereafter, on March 18, 1971, the Administrator of EPA announced the issuance of appropriate notices of cancellation based on a finding of "a substantial question as to the safety" of Aldrin and Dieldrin. At the same time the Administrator concluded that current uses of the compounds did not pose "an imminent hazard to the public," as that standard was interpreted in that Order, and he thus refrained from ordering a suspension of the compounds pending completion of the administrative procedure of review provided by the governing statute, the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. §§ 135 et seq., since amended by Pub. L. 92-516, 86 Stat. 973, October 21, 1972 (FIFRA-amended). The Administrator's failure to suspend the registrations prompted the filing by EDF of a petition for review in the U.S. Court of Appeals for the District of Columbia. A decision was issued by the Court of Appeals on May 5, 1972, "Environmental Defense Fund v. Environmental Protection Agency," 465 F.2d 528 (1972). In that decision the Court remanded the record to EPA for further reconsideration of the issue of suspension, in light of the judicial interpretation of the power of suspension enunciated in the decision and the recently released Aldrin/Dieldrin scientific Advisory committee report. The Court specifically called upon EPA to explicate the nature and extent of evidence available on the carcinogenicity of Aldrin/Dieldrin.

On June 26, 1972, upon review of the scientific advisory committee report and all other available data the Administrator reaffirmed the cancellation of nearly all Aldrin/Dieldrin products. In addition, that same order solicited views from the general public on the question of whether any of the cancelled uses should also be suspended. Particular emphasis was given to those methods of application and formulation (i.e., aerial application and dust formulation) presenting the most obvious risk of widespread unavoidable dissemination of the compounds.

On December 7, 1972, the Administrator announced that immediate curtailment of all aerial applications, dust formulations and use of these products for fire ant control and in moth proofing systems involving effluent discharge had been achieved through the voluntary cooperation of those affected Aldrin and Dieldrin registrants. The Administrator, in response to the Order of the Court of Appeals, again re-examined the issue of suspension. Based on a review of the evidence available at that time the Administrator again declined to exercise his power of suspension pending the completion of the hearing. His decision was based on the belief that the current uses did not present a substantial likelihood that serious harm would be experienced during the 12-18 months in which the hearing was expected to be completed.

**II Basis for current re-evaluation of suspension.** In the initial Aldrin/Dieldrin cancellation Order, former Administrator William D. Ruckelshaus stated then that the Agency would be prepared to re-evaluate the question of suspension at any later stage in the administrative proceedings (March 18th Statement, 1971, p. 12). In this Agency's brief to the U.S. Court of Appeals for the District of Columbia filed in response to the earlier EDF appeal on the Aldrin/Dieldrin suspension issue, EPA readily acknowledged that: "The concept of the safety of the product is an evolving one which is constantly being further refined in light of our increas-

ing knowledge." Indeed, as the Court of Appeals emphasized in its opinion remanding the Aldrin/Dieldrin suspension issue to this Agency: "The administrative process is a continuing one, and calls for continuing re-examination at significant junctures." "Environmental Defense Fund, Inc. v. Environmental Protection Agency," supra, citing "American Airlines, Inc. v. C.A.B.", 359 F.2d 624 (en banc), cert denied 385 U.S. 843 (1966).

There is no question but that the current proceeding involving the continued registration and future manufacture and use of Aldrin/Dieldrin products is at a "significant juncture." It has been estimated that the taking of evidence alone in this hearing will continue for another 4 or 5 months. This means that a final Agency decision cannot be expected until sometime in early 1975. Thus, the time period for a final decision as projected by the Administrator in December 1972 has grown considerably. Absent this Order there is nothing to prevent the manufacturer, during the period prior to a final decision on cancellation, from producing an additional estimated 10 million or more pounds of active technical product Aldrin for anticipated 1975 sales. This will mean that after formulation of the technical product over 50 million pounds of formulated final products will be available for sale and possible use over the period of the next year. The manufacturing process which would produce the Aldrin/Dieldrin products for sale and use in 1975 has been scheduled, according to the sole manufacturer, Shell Chemical Company, to begin on September 1, 1974. Shell has refused to delay voluntarily the manufacture of these products until completion of the current cancellation hearing. If after the end of the cancellation proceeding I decide finally to prohibit the use of these pesticides and yet the current manufacturing cycle is permitted to be completed, the disposal of such tremendous amounts of these chemicals will present enormous environmental risks and problems, discussed further below, which must be anticipated and avoided by this action. Once the manufacturing process is completed such risks are irrevocably created.

This proceeding is at a "significant juncture" in another highly significant sense in that an intense examination of the relevant evidence over the past year has brought to light certain previously unknown facts, which have now been reviewed and scientifically documented for the first time. On March 22, 1974, this Agency's Office of Hazardous Materials Control, through the Office of General Counsel, completed its presentation of evidence both as to the risks (human, environmental, and economic) from continued Aldrin/Dieldrin usage, the availability of preferable alternative compounds and the projected economic consequences of discontinuation.

It is clear that a great deal of evidence was simply not available to former Administrator Ruckelshaus at the time of his re-evaluation of the suspension issue on December 7, 1972. A brief elaboration of such evidence is set forth below in Section III of this Order. In addition, one cannot ignore events of this summer such as the necessary condemnation of more than eight million Dieldrin contaminated chickens (some of which accumulated levels of Dieldrin as high as 3 ppm in the fat) in the State of Mississippi. This occurrence highlights a major potential problem which will continue to exist as long as these persistent, highly fat soluble compounds continue to be used. While the incident in Mississippi is unique in its staggering proportions, I am informed that it is by no means an isolated incident but affects other industries as well. Whether these incidents are a result of accidents or

misuse, or whether they are a direct consequence of the intense agriculture use on feed and food crops, does not of course alleviate the economic consequences which must be borne by the affected industry or the serious potential risks to public health. Indeed, the regular pattern of such occurrences would seem to indicate that as long as Aldrin and Dieldrin continue to be used, such continuing threats to the public safety are inevitable.

**III Evidence in support of suspension.** In remanding the suspension issue to EPA in May of 1972 the Court of Appeals, as previously noted, put special emphasis on the issue of carcinogenicity, asking EPA to elaborate on the nature and extent of such evidence. "Environmental Defense Fund, Inc. v. Environmental Protection Agency," supra, at 538. Consequently a discussion of the limited evidence available at that time, i.e. evidence of liver tumors caused by Dieldrin in a single strain of mouse, constituted the principle rationale supporting the Administrator's finding of a "risk" amounting to a "substantial question of safety" but not "a red light requiring immediate elimination of all dieldrin residues in the diet." (December 7, 1972, Order, at 10, fn. 5). The Administrator did not elaborate further on the risks of other toxic effects nor the issue of benefits or lack thereof.

I am not required here to make an extensive elaboration with findings and conclusions on the multiple issues involved in the cancellation proceeding. As the Court of Appeals observed in "Environmental Defense Fund v. Environmental Protection Agency," supra, at 537, "the function of the suspension decision is to make a preliminary assessment of evidence, and probabilities, not an ultimate resolution of difficult issues." Thus, I will outline with specificity why the best scientific and medical evidence compels suspension at this time.

Specifically, we have learned the following pertinent information:

1. Since the 1970 usage of Aldrin, the last year for which complete use figures were available prior to the issuance of the December 1972 Suspension Order, the use of Aldrin has actually increased from 8.9 million to 11.8 million pounds in 1972. Thus, the continued decline in use that was anticipated at that time has not been realized.

2. For the most recent reporting period of Fiscal Year 1973, the Food and Drug Administration, in its market basket survey, reports that measurable amounts of Dieldrin were found in composite samples of 83 percent of all dairy products, 83 percent of all garden fruits (except tomatoes, green peppers, cucumbers), 96 percent of all meat, fish, and poultry samples and in percentages which range from 12 percent to 42 percent in other food composites of grain and cereal products, potatoes, leafy vegetables, oils, fats and shortening, and fruit. In the normal diet the majority of total Dieldrin intake is due to the residues in dairy products, meat, fish, and poultry. While actual Dieldrin intake levels have shown a slight decline in the market basket survey for the years 1971 and 1972, the percentage of major food category composites found to contain Dieldrin have

\*It should be noted prior to discussion of the evidence that while Aldrin use accounts for nearly 95 percent of the total use of the two compounds, Aldrin is known to break down quite rapidly into its metabolite Dieldrin. Consequently, residues found in the environment are principally Dieldrin residues; and thus the hazards of Dieldrin are generally focused upon. Occasionally the two are used interchangeably.

actually shown a steady increase during this same period.

In addition, air monitoring conducted by this Agency during the years 1970-72 reveals that Dieldrin was detected in over 85 percent of the 3,345 air samples taken nationally, so that respiration must be considered an additional source of human Dieldrin intake.

3. It appears from recent data that virtually every individual in this country has Dieldrin stored in the body. Based on the annual national human monitoring survey conducted by this Agency, tissue samples taken during therapeutic surgery or at autopsy revealed that in 1970, 98.5 percent of all individuals tested had detectable residues of Dieldrin in their adipose tissue, with an average of 0.27 ppm. For the year 1971, 99.5 percent of all those sampled had detectable amounts that averaged 0.29 ppm.

4. Evidence now available indicates that Dieldrin definitely causes significant increases of tumors in two and probably three different strains of mice tested. Moreover, there is positive evidence of increased tumor incidence when Dieldrin was fed in low doses to two different strains of rats as well. Many of these tumors have been diagnosed unequivocally by eminent pathologists as malignant. There is further positive evidence of malignancy based on metastasis to other organs and transplantability into untreated host animals. Dieldrin-caused tumors in both mice and rats appear at a variety of sites within the body, including the liver, lungs, lymphoid tissue, thyroid, uterus and mammary glands. These tumors have resulted at highly statistically significant levels from dietary dosages as low as 0.1 ppm in the diet, which is the lowest dosage ever tested in any animal species. In short, even the lowest levels of Dieldrin produced significant cancerous effects. Furthermore, the evidence indicates that exposure to Dieldrin for periods as brief as several weeks is sufficient to cause highly significant carcinogenic effects in test animals.

This evidence is considerably more extensive than that involving the single strain of mouse discussed in the December 7, 1972, Order by the Administrator. This is not to say that a compound should not be considered carcinogenic because the first and only evidence of carcinogenicity is based on the results of a single experiment in a single strain of one particular test species. Indeed, such evidence generally raises a substantial question of safety requiring commencement of cancellation proceedings. Recent observations made by scientists in the World Health Organization's International Agency for Cancer Research demonstrate that it is unlikely that a compound shown to be carcinogenic in one species will not similarly be carcinogenic when adequately tested in another test species. The more extensive data which have now been developed on the carcinogenicity of Dieldrin confirm and augment the original data from the single strain of mouse. World cancer experts who have testified at the cancellation hearings earlier this year have confirmed the very serious nature of this evidence.

5. While there is no known way of extrapolating absolute conclusions from animals to man, we do know that the basic overall similarity of the experimental animal to man from the standpoint of carcinogenicity is clear in principle. The principle is accepted by U.S. Government Agencies and private health organizations. While recognizing the fact that exposure to even the smallest amount of a carcinogen is no guarantee of absolute safety, scientists at the National Cancer Institute have devised one method for estimating the degree of cancer risk to a particular carcinogen. These estimates are derived from the animal cancer test results.

Based upon these calculations and the necessary assumptions, the present estimated average human daily dietary intake of Dieldrin subjects the human population to an extremely high cancer risk.

6. While most of the data with respect to the estimated daily intake of Aldrin/Dieldrin are computed on an average basis, it is obvious that based on differences in dietary composition some segments of the population will greatly exceed that average. In fact, we have now learned from a national dietary survey that young children, particularly infants from birth to one year of age, because of their high dairy product diets, consume considerably more Dieldrin on a body-weight basis than any other age segment of our population. Evidence from laboratory experiments with test animals has shown that the newborn is generally more sensitive to carcinogens. Therefore, infants exposed to Dieldrin may be subjected to a considerably increased risk. It has been shown that in humans Dieldrin is transferred to the fetus during pregnancy. Thus exposure to Dieldrin begins at the earliest stages of life.

7. Evidence based upon human subjects is virtually impossible to obtain. The general human population is continually exposed to a multiplicity of chemicals. A significant "control group" is thus impossible to establish. Moreover, to await the twenty to thirty years of exposure necessary to determine the ultimate effect is only to wait until the damage to an entire generation of humans is complete. We reject the "body count" approach to protection against cancer or other such long term threats to public health. Prediction based on laboratory testing is thus necessary and unavoidable if public health is to be protected.

8. There are additional serious questions as to other toxicological effects demonstrated by these compounds which have a bearing on further human and environmental risks. These include, birth defects caused by Aldrin and Dieldrin in hamsters and mice, adverse effects on learning capabilities in monkeys fed low levels of Dieldrin, adverse reproductive effects caused by Dieldrin in male and female dogs and mice and evidence showing the danger posed to endangered species such as the bald eagle.

9. Finally, there is no agricultural necessity for the major use of these compounds. It is estimated that more than 90 percent of the total usage of Aldrin and Dieldrin is on corn. According to the most recently published U.S. Department of Agriculture statistics, less than 10 percent of the total corn grain producing acreage in the United States is treated with these compounds. On the acreage where Aldrin is used, there are environmentally preferable substitute pesticides, alternative means of pest control or promising substitutes awaiting Federal registration.

The number of additional uses which are actually being defended in the hearing is quite small. For most of these minor uses there also are alternative pesticides which can be utilized. In a few specific instances of very minor uses, there may be no registered alternatives at this time. However, the provision of this suspension order permitting continued use of already formulated Aldrin and Dieldrin products will give some time for the registration of promising environmentally tolerable alternatives, where registrations do not already exist.

As was stated by a subgroup within the U.S. Department of Agriculture reviewing Aldrin/Dieldrin residues in food and feed as far back as December, 1968:

It is pertinent to note an experience of about ten years ago when it was clearly determined by residue studies that aldrin, dieldrin, and heptachlor could no longer be permitted to control grasshoppers on western rangeland because of meat residue problems.

The search for nonpersistent alternative insecticides was stimulated and an effective organophosphorous insecticide was found. Thus, a serious food safety problem was eliminated. Agriculture in general would not suffer if aldrin-dieldrin were eliminated from use on agricultural crops.

Having reviewed the above stated pertinent factual data as well as all other available pertinent data, I am persuaded that there exists an "imminent hazard" within the meaning of the statute (as defined by section 2(e) of the FIFRA). It should be noted that during late 1973 and early 1974 the Agency staff presented its evidence on the carcinogenicity of Dieldrin. During this time the manufacturer, through counsel, had its full resources available for extensive cross examination of witnesses. The manufacturer has completed the presentation of most of its evidence on other aspects of the case. While earlier this year it was anticipated that the responsive evidence on carcinogenicity would have already been completed, it now appears that this evidence will be presented during September and October of this year. The cancer experts with whom we have consulted advise us that the rebuttal evidence thus far proffered by Shell is unlikely to be persuasive. Further assessment of the substantiality of this evidence can be made at the expedited hearing, if the registrants request such a hearing.

IV *Effect of order and considerations given thereto.* I find that in light of the evidence above and because of the time this hearing will take in the future, a situation exists in which the manufacture of Aldrin and Dieldrin during the coming months will be "likely to result in unreasonable adverse effects" on man and the environment.<sup>2</sup> In consultation with the sole manufacturer of Aldrin/Dieldrin, the Shell Chemical Company, and its formulators, a determination shall be made as to the precise extent of formulated products currently on hand as of the date of this order. Any stocks of technical grade Aldrin and Dieldrin which have not already been formulated into products may not henceforth be formulated for use in any product other than those uses exempted in the June 26, 1972 order as confirmed in the December 7, 1972 order.

This Agency is not unaware that certain particular uses of pesticides can result in a greater likelihood of unreasonable adverse effects on the environment than others. Such a distinction, however, is particularly difficult to make with respect to the compounds Aldrin/Dieldrin which are so highly persistent, mobile, lipid soluble and capable of exerting such a broad range of toxic effects. Therefore, this order effects all those registered uses for which appeals were duly filed from the June 26, 1972 order (see footnote 1 above).

Finally, I have invoked the new "Special Rule" provision of section 15(b)(2) permitting continued use of those existing stocks of formulated, federally registered products containing Aldrin or Dieldrin. It is held by many of those who have investigated the potential risks and problems attendant to the disposal of consolidated stocks of some toxic materials, such as these pesticides, that it may well be safer environmentally to dispose of them through normal use patterns

<sup>2</sup> As further defined by the statute, section 2(bb), the term "unreasonable adverse effects on the environment" can include "any unreasonable risk to man or the environment, taking into account the economic, social, and environmental costs and benefits of the use of any pesticide."

than to attempt to retrieve the product from the retailer or user, and then to transport, consolidate and either bury or burn remaining supplies. Absent invoking the "Special Rule", this latter alternative is what would be required at present with existing formulated stocks. Additionally, it is my understanding that corn farmers have already applied Aldrin this past spring, so that there remains only limited usage on minor crops during the remainder of the current growing seasons. Permitting use of existing stocks in these situations will not penalize farmers who have already purchased the compounds with the expectation of using them during the remainder of the growing season.

Accordingly, I intend to order the suspension of the registrations and prohibit the production for use of all pesticide products containing Aldrin or Dieldrin which were subject to and for which appeals were duly filed from the Aldrin/Dieldrin cancellation order issued by the Administrator of the Environmental Protection Agency on June 26, 1972 (see footnote 1, above). In the absence of a request for an expedited hearing, this order shall be effective 5 days after receipt by affected registrants.

Dated: August 2, 1974.

RUSSELL E. TRAIN,  
Administrator.

[FIFRA Dockets No. 145, etc.]

SHELL CHEMICAL COMPANY, ET AL.

PRELIMINARY STATEMENT REGARDING  
RECOMMENDED DECISION

These are consolidated proceedings under the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. 136 et seq., 1973 Supp.). Pursuant to section 6(c) of the act (7 U.S.C. 136d(c)), the Administrator, on August 2, 1974, issued a notice of intention "to suspend the registrations and prohibit the production for use of all pesticide products containing Aldrin or Dieldrin which are subject to and for which appeals were duly filed from the Aldrin/Dieldrin cancellation order issued by the Administrator of the Environmental Protection Agency on June 26, 1972."<sup>1</sup> The notice of suspension also contained detailed findings pertaining to the question of "imminent hazard" as required by the act.<sup>2</sup>

"Unreasonable adverse effects on the environment" is defined in the act to mean "any unreasonable risk to man or the environment,

taking into account the economic, social, and environmental costs and benefits of any use of any pesticide." (7 U.S.C. 136(bb)).

Shell Chemical Company, the sole manufacturer of the pesticides involved, filed timely objections to the notice of intention to suspend and subsequently 22 other registrants also filed objections thereto.<sup>3</sup> In addition, the Secretary of Agriculture of the United States, Environmental Defense Fund, Inc., the National Audubon Society, and Florida Citrus Mutual were granted leave to intervene herein pursuant to § 161.121 (e) of the rules of practice (38 FR 19371, 19378).

Section 6(c) (1) of the statute further provides that "No order of suspension may be issued unless the Administrator has issued or at the same time issues notice of his intention to cancel the registration or change the classification of the pesticide." By FR Notice 71-4, dated March 18, 1971, and issued by the Acting Director of the then Pesticides Regulation Division, after prior piecemeal cancellations of registrations of pesticides containing the insecticides aldrin and dieldrin, the registrations under the act of all registrations of products containing aldrin and dieldrin were cancelled. Of the 88 registrants who, in effect, appealed the cancellation of their registrations by FR Notice 71-4, 2 requested a public hearing and 84 registrants requested that the matter be referred to an advisory committee selected by the National Academy of Sciences, which they could then do under the statute. The cancellations involved were not effective pending the outcome of such appeals. The Aldrin/Dieldrin Advisory Committee to the Administrator issued a report March 28, 1972, recommending, in part, that certain uses of the pesticides involved be disallowed, that enumerated uses thereof are "valuable and not harmful," that further studies be conducted in specified areas and that a further review be conducted in the future.

By a Determination and Order dated June 26, 1972, then required by the statute, the Administrator affirmed the cancellation of the registrations of all products containing aldrin or dieldrin except with respect to those registered uses involving the dipping of roots or tops of nonfood plants, subsurface ground insertions for termite control and mothproofing by manufacturing processes which utilize the pesticide in a closed system, which uses the Administrator found to "pose de minimus risks." The Administrator therein deferred decision on the suspension, as distinguished from the cancellation, of the aldrin and dieldrin registrations.

Section 4c of the act (7 U.S.C. 135b(c)) then provided that administrative appeals from the decision of the Administrator to maintain cancellations in effect may be taken within 60 days from the date of such decision. Appeals therefrom were taken by the filing of objections thereto and request for a public hearing by 38 registrants.

The Administrator, by a Determination and Order dated December 7, 1972, in part, consolidated into the cancellation proceedings petitions dealing with tolerances of aldrin and dieldrin pursuant, in effect, to sections 406 and 408 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346 and 346a). The Administrator also therein declined to suspend the registrations involved, clarified his prior order with respect to permitted uses

<sup>3</sup>It is not clear that all of the additional registrants filed timely objections and are properly parties to these proceedings. However, respondent has failed to file motions to dismiss in this regard and we are not in possession of the facts to enable us to decide this issue.

and, in effect, lifted the cancellations of registrations for manufacturing use only. Oral hearing in the cancellation proceedings commenced August 7, 1973, and was in progress when the notice of intention to suspend was issued.<sup>4</sup>

On August 7, 1974, Herbert L. Perlman, Chief Administrative Law Judge, Environmental Protection Agency, was appointed the Presiding Officer in the suspension proceedings. Prehearing conferences were held August 7, 8, 9 and 13, 1974, and the hearing herein commenced August 14, 1974. The registrants filing objections to the notice of intention to suspend subsequent to the filing of objections by the Shell Chemical Company were consolidated into the proceeding instituted by Shell pursuant to § 161.121 (f) of the rules of practice and evidence received in the cancellation proceedings was incorporated by reference into the suspension proceedings by the agreement of the parties. In addition, respondent did not present evidence herein with respect to the matters contained in paragraph 8 of the August 2, 1974 notice of intention to suspend dealing with toxicological effects of aldrin and dieldrin other than cancer, and danger posed to endangered species.

The Administrator ordered that the hearing herein take no longer than 15 hearing days and the hearing closed September 12, 1974. The active participants at the hearing were represented by the following:

William D. Rogers, Andrew S. Krulwich, David H. Lloyd and Linda Blumenfeld, Attorneys at Law, Washington, D.C., representing Shell Chemical Company,

Raymond W. Fullerton and Richard S. Wackerstrom, Office of the General Counsel, United States Department of Agriculture, representing Intervenor Secretary of Agriculture of the United States; and John A. Knebel, General Counsel, United States Department of Agriculture, who presented one witness and made oral argument for this intervenor,

William A. Butler and Jacqueline M. Warren, Attorneys at Law, Washington, D.C., representing Intervenor Environmental Defense Fund, Inc. and the National Audubon Society, and

John C. Kolojeki, William E. Reukauf, Timothy L. Harker, Edward Lyle, and John W. Lyon, Office of the General Counsel, Environmental Protection Agency, representing respondent Assistant Administrator, Environmental Protection Agency.

Subsequent to the close of hearing the parties filed briefs and I hereby submit my recommended decision within the exceedingly short period of time provided by the rules of practice.

FINDINGS OF FACT

1. The registrants in these consolidated suspension proceedings are as follows:

Agway Inc., a corporation whose address is Box 1333, Syracuse, New York;  
AMOCO Oil Company, a corporation whose address is 200 East Randolph Drive, Chicago, Illinois;  
Arlange Laboratories, Inc., a corporation whose address is 175 Pearl Street, Brooklyn, New York;  
Borden, Inc., a corporation whose address is 50 West Broad Street, P.O. Box 2478, Columbus, Ohio;

<sup>4</sup>By August 2, 1974, over 24,000 pages of transcript and many thousand of pages of exhibits, including the witnesses' direct testimony, were adduced in the consolidated cancellation proceedings.

<sup>1</sup>As explained in the August 2, 1974 notice, a final order of suspension in these consolidated proceedings would not include the 3 uses permitted by the June 26, 1972 order, that is, restricted termite use, the dipping of roots and tops of nonfood plants and use in a totally effluent-free mothproofing system. Also, the August 2, 1974 notice of suspension permitted, pursuant to section 15(b) (2) of the act (7 U.S.C. 136m(b) (2)) the "use or sale of existing formulated stocks of pesticides containing Aldrin or Dieldrin which were on hand as of the effective date of the suspension order."

<sup>2</sup>Section 6(c) (1) of the act provides that "If the Administrator determines that action is necessary to prevent an imminent hazard during the time required for cancellation or change in classification proceedings, he may, by order, suspend the registration of the pesticide immediately." The term "imminent hazard" is defined to mean, in part, "a situation which exists when the continued use of a pesticide during the time required for cancellation proceeding would be likely to result in unreasonable adverse effects on the environment \* \* \*" (7 U.S.C. 136(1)).

Borderland Products, Inc., a corporation whose address is 560 Fulton Street, P.O. Box 368, Buffalo, New York;

Bonide Chemical Company, Inc., a corporation whose address is Utica, New York;

C. J. Martin Company, a company whose address is 606 West Main Street, P.O. Box 1089, Nacogdoches, Texas;

Chevron Chemical Company, a company whose address is 200 Bush Street, San Francisco, California;

Coastal Chemical Corporation, a corporation whose address is Evans Street, Extension, P.O. Box 856, Greenville, North Carolina;

Colorado International Corp., a corporation whose address is 5321 Dahlia Street, Commerce City, Colorado;

Dexol Industries, a company whose address is 1450 West 228th Street, Torrance, California;

Farmland Industries, Inc., a corporation whose address is P.O. Box 7305, Kansas City, Missouri;

FCX Inc., a corporation whose address is P.O. Box 2419, Raleigh, North Carolina.

Helena Chemical Company (MidSouth Division), a company whose address is P.O. Box "N", West Helena, Arkansas;

Key Laboratories, Inc., a corporation whose address is Baskins Crossing, Largo, Florida;

McLaughlin Gormley King Company, a company whose address is 1715 S.E. Fifth Street, Minneapolis, Minnesota;

Riverside Chemical Company, a company whose address is P.O. Box 17119, Memphis, Tennessee;

Shell Chemical Company, a division of Shell Oil Company, a corporation, whose address is 2401 Crow Canyon Road, San Ramon, California;

Southern Agricultural Insecticides, Inc., a corporation whose address is P.O. Box 218, Palmetto, Florida;

Stauffer Chemical Company, a company whose address is 1200 South 47th Street, Richmond, California;

Stephenson Chemical Company, Inc., a corporation whose address is P.O. Box 87188, College Park, Georgia;

Stevens Industries, Inc., a corporation whose address is Dawson, Georgia; and

Triangle Chemical Company, a company whose address is P.O. Box 4528, 206 Lower Elm Street, Macon, Georgia.

2. The intervenors in these consolidated suspension proceedings are the Secretary of Agriculture of the United States, Environmental Defense Fund, Inc., National Audubon Society, and Florida Citrus Mutual. The respondent herein is the Assistant Administrator, Environmental Protection Agency.

3. Aldrin is the common name of a chemical compound approved by the International Organization for Standardization (except in Canada, Denmark and U.S.S.R.) and by the British Standards Institution for a material containing not less than 95 percent of 1,8,9,10,11,11-hexachloro-2,3,7, 6-endo-2,7,8-exo-tetracyclo [6.2.1.1<sup>2,4</sup>.0<sup>2,7</sup>] dodec-4,9-diene. In Canada, aldrin refers to the pure compound, known as HHDN in Great Britain. It was introduced in the United States in 1948 by Julius Hyman and Company as Compound 118 under the trademark Octalene. In December 1949, the insecticide was given the common name "aldrin" by the Interdepartmental Committee on Pest Control of the United States Department of Agriculture. It has been used as a broad spectrum insecticide on a variety of crops and in a wide variety of locations and situations. Its insecticidal action was first described by Lidon under patent number 2,635,977 (this was transferred to Shell Development Company in 1953), and Schmerling had patent number

2,911,477 (transferred to Universal Oil Products in 1959). The physical properties of the compound are as follows:

(a) As a pure compound, it is a white crystalline odorless solid, with a molecular weight of 364.93.

(b) It has a melting point of 104-104.5° Centigrade.

(c) Its vapor pressure is  $2.31 \times 10^{-5}$  mm of Mercury at 20° Centigrade.

(d) It is slightly soluble in water (0.0027 mg/100 ml or  $2.7 \times 10^{-6}$  grams per 100 milliliters of water).

(e) It is lipophilic, having a strong attraction for fats, and is fat soluble.

(f) Its solubility in various substances is as follows:

Pentane—3 grams per 100 milliliters at 25°C.

Ethanol—5 grams per 100 milliliters at 25°C.

n-Butanol—9 grams per 100 milliliters at 25°C.

Butanone—24 grams per 100 milliliters at 25°C.

Amylacetate—30 grams per 100 milliliters at 25°C.

Acetone—66 grams per 100 milliliters at 25°C.

Benzene—83 grams per 100 milliliters at 25°C.

Xylene—92 grams per 100 milliliters at 25°C.

Ethylendichloride—105 grams per 100 milliliters at 25°C.

Carbon Tetrachloride—105 grams per 100 milliliters at 25°C.

(g) It is stable in the presence of organic and inorganic alkalis.

(h) Oxidizing agents and strong acids attack the unchlorinated ring.

(i) Upon prolonged storage, there is a slow formation of Hydrochloric acid (HCl) which causes it to be corrosive.

(j) The technical product is a tan to dark brown solid with a melting range of about 49 to 60°C.

(k) It is a non-systemic and persistent insecticide.

4. Dieldrin, a manufactured product and a metabolic degradation product of aldrin, is the common name approved by the International Organization for Standardization (except in Canada, Denmark and the U.S.S.R.) and by the British Standards Institution for a material containing not less than 85 percent of 1,8,9,10,11,11-hexachloro - 4,5 - exo-epoxy-2,3,7,6-endo-2,1 - 7,8 - exo - tetracyclo [6.2.1.1<sup>2,4</sup>.0<sup>2,7</sup>] dodec-9-ene. In Canada dieldrin refers to the pure compound, known as HEOD in Great Britain. It is used as a broad spectrum insecticide and was first introduced in 1948 by Julius Hyman and Company as Compound 497 under the trade name of Actalox. In December, the insecticide was assigned the common name "dieldrin" by the Interdepartmental Committee on Pest Control. It is classified as a non-systemic and persistent insecticide of high contact and stomach activity to most insects. U.S. patents were granted to Soloway with the patent registration number of 2,676,131. This was transferred to the Shell Development Company in 1954. Another U.S. patent was issued to a Payne and Smith, patent number 2,776,301 which was transferred to Shell Development Company in 1957. A British patent number 794,373, was assigned to N. V. Bataafsche in 1958. Some of the physical properties are as follows:

(a) The pure compound is a white odorless crystalline solid with a molecular weight of 380.93.

(b) Its melting point is 175-176° Centigrade.

(c) Its vapor pressure is  $1.78 \times 10^{-7}$  millimeters of mercury (Hg) at 20° Centigrade.

(d) It is lipophilic, has a strong attraction to fats, and is fat soluble.

(e) Its solubility in various substances is as follows:

Oil, Standard No. 10—1.3 grams per milliliter at 30° C.

Hexane—2.5 grams per milliliter at 30° C.

Methanol—3.4 grams per milliliter at 30° C.

Acetone—35.4 grams per milliliter at 30° C.

Benzene—36.9 grams per milliliter at 30° C.

(f) It is slightly soluble in water, 0.189 milligrams in 100 milliliters of water to say it in another way,  $1.89 \times 10^{-4}$  g/100 ml.

(g) Dieldrin is more stable than aldrin as indicated by its stability when exposed or combined with alkali and mild acids.

(h) The technical product is buff to light brown flakes with a setting point not below 95° C.

5. Beginning in 1950, Shell Chemical Company became the sole national distributor for aldrin and dieldrin and Julius Hyman and Company remained the sole manufacturer. In May, 1952, Julius Hyman and Company was amalgamated with Shell as the Julius Hyman and Company Division of Shell Chemical Corporation. From 1952 until 1967, Shell sold only technical aldrin and dieldrin to pesticide formulators who in turn made it up into emulsible concentrate, dust, wettable powder or granular formulations for sale under their own company's brand name. Beginning in 1967, Shell started selling formulated product under the Shell brand name. By 1972, only 11 percent of the total aldrin and dieldrin sold was sold as technical product for use in non-Shell branded formulations.

6. Aldrin and dieldrin are toxic to humans. In the instance of aldrin, poisoning may occur by ingestion, inhalation, and/or skin absorption. Severe symptoms may result from ingestion or percutaneous absorption of 1 to 3 grams, especially in the presence of liver disease, renal damage, tremors, ataxia, convulsions followed by C.N.S. depression, respiratory failure and death can occur from acute exposures. Chronic exposures over a prolonged period may cause at least hepatic or liver damage.

7. (a) Approximately 1.5 million pounds of aldrin were sold in 1950, the year it was introduced, practically all of this for use on cotton. Sales for use on cotton continued to account for a major portion of the total aldrin sales until the mid-1950's when the superior effectiveness of dieldrin against the boll weevil became widely known. Sales for use on cotton, particularly in the southeast, where quick effectiveness between the many rain showers is a necessity, continued until the mid-1960's. In 1954, cotton accounted for 30 percent of the total sales whereas in 1963, the last year of any real cotton use, it was less than 1 percent.

(b) Two ounces of aldrin per acre diluted in diesel oil was an effective and economical grasshopper insecticide and it was adopted for all Federal cooperative grasshopper control programs. By 1954 approximately 4 million acres had been treated with aldrin. Aldrin remained the insecticide of choice until the late 1950's when dieldrin at 0.5 ounce per acre became the insecticide of choice and was used until the mid-1960's. In 1954, use for grasshopper control programs accounted for approximately 16 percent of total sales but decreased to less than 1 percent in the early 1960's. In addition to the use of aldrin in the Federal grasshopper control programs, substantial quantities of aldrin (and dieldrin) were sold for use in other Federally-sponsored programs from 1954 to the late 1960's. These included eradication programs for Japanese beetle, European chafer, white fringed beetle, and Imported Fire Ants. Beginning in the late 1950's,

dieldrin became the compound of choice for all of these programs, but some aldrin was continued for the Japanese beetle programs.

(c) Other early uses which accounted for substantial quantities of aldrin, and later were determined to lead to high residue in foods and their by-products, sometimes used as animal feeds, were soil applications on land planted to potatoes, peanuts and sugar beets. In 1954, these uses accounted for approximately 13 percent of the total used. The total pounds used annually remained fairly constant at approximately one-half million pounds through 1962. Soil use on potatoes and peanuts was withdrawn in 1963 but use on sugar beets continued until 1967.

(d) Until 1955, cotton was the principal use crop for aldrin. Corn soil usage took the lead that year and has been the main single use since. As of 1971, the estimates showed that corn soil usage accounted for 80 percent of the total sales for this product. Other end uses and their percent of the total were as follows: Termite and PCO, 14 percent; rice seed treatment, 3 percent; citrus soil use, 1 percent; other small grains, corn and vegetable seed treatments, 1 percent; and miscellaneous soil applications including on tobacco, vegetables, strawberries, 1 percent. Some of the principal end uses of aldrin for 1954, 1964, 1968 and 1971 were as follows:

ALDRIN END USE ESTIMATES—1000 LBS.

	Year			
	1954	1964	1968	1971
Cotton (foliage).....	934	19		
Corn (soil).....	804	10,191	12,053	9,410
Grasshoppers.....	476	20		
Potatoes (soil).....	289			
Peanuts.....	81			
Citrus (soil).....		35	200	150
Sugar beets.....		60		
Seed treat (except rice).....	6	80	150	130
Rice seed treatment.....		235	472	258
Japanese beetle.....		13		
White-fringed beetle.....	10			

The end use estimate of aldrin under corn is 8.8, 6.9 and 7.6 million pounds during 1972, 1973 and 1974, respectively.

(e) A continued gradual decline in aldrin sales in the future may occur as corn rootworm resistance moves eastward through Indiana and Ohio. Also seed corn maggot resistance to aldrin may also spread outside the Iowa-Illinois area into other corn-producing states.

8. (a) Dieldrin was first used as a spray or dust on cotton for boll weevil control. Because of its effectiveness against all cotton pests except the lepidopterous species, it was widely used in Texas and the Mississippi Delta area. Dieldrin required fewer applications because of its residual effectiveness and was applied every seven to ten days as the infestations warranted. Practically all of the 1951 sales of dieldrin were for use on cotton. This use peaked in 1955 when slightly more than one million pounds were sold for cotton insect control. The boll weevil became resistant to all chlorinated insecticides in the late 1950's, and only minor quantities were sold in the 1960's.

(b) Forage crop uses, particularly for alfalfa weevil control when this insect moved into the northeastern United States, accounted for approximately one million acres being treated annually during the mid to late 1950's and early 1960's. Armyworm, which attack sporadically, accounted for several

million acres of small grains being treated in the Midwest in the early 1960's. Dieldrin as well as aldrin was used in the Federal grasshopper control programs until the mid-1960's. Other forage crop pests of lesser importance which were controlled by foliage applications of dieldrin were chinch bugs and grasshoppers attacking corn and small grains and the pale Western cutworm, which attacked small grains in the Rocky Mountain states area.

(c) Dieldrin was also very effective against houseflies and mosquitoes until these pests became resistant. It was also effective against deer flies, sand flies, black flies and many other public health pests which were injurious and annoying to man and animals. During the 1950's and into the 1960's, dieldrin was used both by individuals as well as state and local agencies to control these pests. These uses led to high residues of dieldrin in some aquatic environments.

(d) Late in the 1950's, it was found that dieldrin was a very effective material to permanently mothproof woolen goods, particularly carpets. If used in the hot acid dye bath, dieldrin would be taken into the wool fiber and "locked" into the fiber. After registration was granted, many of the woolen mills in the United States started using dieldrin. Approximately 250 thousand pounds of dieldrin were used annually until Shell Chemical Company withdrew the registration in 1970 when it was determined that some dieldrin would remain in the dye bath effluent which was discharged into streams and rivers.

(e) As with aldrin, government-sponsored eradication programs for Japanese beetle, white-fringed beetle, European chaffer, imported fire ants and alfalfa snout beetle took considerable quantities of dieldrin from the mid-1950's through the late 1960's. Probably the biggest program was for white-fringed beetle where usage has averaged more than 100 thousand pounds annually since 1955.

(f) The overall use of dieldrin has dropped from a peak of 3.6 million pounds in 1956 to approximately 600 thousand pounds today. As of 1971, the end use sales estimates showed the following percent of the total sales for the following uses: Termites and PCO, 44 percent; fruit (foliage), 20 percent; seed treatment, 14 percent; vegetables, 13 percent; and miscellaneous uses including on tobacco, sweet potatoes, etc., 9 percent. Sales volumes for 1954, 1964, 1968 and 1971 for some of the principal end uses at that point in time were as follows:

DIELDRIN END USE ESTIMATES—1,000 LBS

	Year			
	1954	1964	1968	1971
Cotton (foliage).....	757	29	1	
Public health.....	62			
Government programs.....	133	255	104	
Fruit (foliage) (plum curculio).....	202	408	217	120
Mothproofing.....		333	153	
Small grains (foliage).....	175	189		
Small Package (home and garden use).....		227	34	2

9. The domestic sales of aldrin and dieldrin from 1950 through July 1, 1974, including consumer/specialty sales but excluding sales to the World Health Organization and the Agency for International Development are as follows:

Year	Aldrin (1,000 lbs)	Dieldrin (1,000 lbs)
1950.....	1,456	0
1951.....	3,283	155
1952.....	814	750
1953.....	1,224	1,135
1954.....	2,653	1,777
1955.....	4,372	2,555
1956.....	6,455	3,625
1957.....	2,431	2,673
1958.....	4,971	3,074
1959.....	5,556	3,663
1960.....	8,169	2,600
1961.....	9,655	2,704
1962.....	10,836	2,690
1963.....	12,162	2,655
1964.....	12,633	2,632
1965.....	14,278	1,814
1966.....	17,327	1,908
1967.....	15,022	1,473
1968.....	13,650	1,356
1969.....	9,692	1,266
1970.....	8,669	743
1971.....	11,615	765
1972.....	11,883	749
1973 (to July 1).....	8,721	432
1973 estimated (to Dec. 31).....	(10,600)	(576)
1974.....	9,600	
1974 (to July 1).....	9,700	

10. The Aldrin/Dieldrin Advisory Committee appointed by the Administrator issued a report March 28, 1972, which contained the following conclusions and recommendations:

**Conclusions.** We find evidence of human injury from present or past use of aldrin or dieldrin. Nevertheless the facts that fairly low levels of dieldrin can cause cancer in mice and interfere with reproduction in some birds are matters for concern, and point to the need for more careful evaluation of the hazard to man. There is clear evidence that past usages have been deleterious to wildlife. Several such past usages have been voluntarily abandoned by Shell Co. Nevertheless, we feel that we must strive to find alternate methods of pest control, including nonchemical methods, for all compounds which lead to persistent residues in humans or wildlife, even when such residues are not demonstrably harmful. How can we move towards this objective. When aldrin or dieldrin can be safely and economically replaced by nonpersistent pesticides they should be so replaced. Several practices which can readily lead to damaging effects upon non-target organisms should be abandoned now in spite of the difficulty of economic replacement, including all applications which lead to contamination of aqueous environments such as rice fields and waterways.

The direct application of aldrin or dieldrin to soils leads to negligible leaching or other transfer from these soils, and environmental contamination is thus very small except where substantial erosion takes place. One of the few studies to estimate the amount which volatilized indicates that 3 percent escapes this way, and thus contaminates the environment directly (we would like to see more extensive data upon this point).

**Recommendations.** The following recommendations are designed to build a basis of facts on which permanent recommendations can be formulated, and to eliminate now those uses of aldrin or dieldrin which result in significant environmental contamination (especially to waterways). We believe that applications directly to soil or to materials buried in soil (e.g. termite control in foundations, and seed treatments when properly applied) lead to little subsequent movement of these insecticides, and should be permitted.

In the following recommendations, we use the term "experts" and "acknowledged authorities" advisedly. The EPA must seek contractual or other arrangements with individuals and institutions accepted as authorities by their peers in the country at large.

1. A committee of experts in chemical carcinogenesis should be formed to propose specific experiments and to agree upon suitable protocols to provide a firm indication of the extent of carcinogenic hazard. These experiments should include studies (in at least two vertebrate species) on the effects on the progeny of mothers fed dieldrin during pregnancy and nursing, the progeny also being fed dieldrin thereafter.

2. The economic consequences of total withdrawal of aldrin and dieldrin should be explored in depth: On all major crops, actual experimental studies must be performed to obtain new, reliable data provided by acknowledged authorities, and should include studies with and without alternative non-persistent pesticides, over a series of years, and in appropriately distributed geographical areas.

3. The fraction of aldrin and dieldrin which escapes by volatilization following application to a variety of soils, under conditions of application and treatment levels commonly used in pest control, should be measured by acknowledged authorities.

4. Monitoring stations should be established in the U.S. and abroad, at which air and water samples can be taken at fixed places over a series of years, and analyzed by unambiguous procedures for aldrin and dieldrin. The intent is to study whether the restrictions we propose do indeed lead to a progressive removal of these compounds from the environment. Agreement should also be sought amongst a group of experts for unambiguous procedures for determination of aldrin and dieldrin in extracts of air, soil, water, food and human and nonhuman tissues. Such procedures should be standardized in the U.S. and preferably internationally as well.

5. The following uses of aldrin or dieldrin should be disallowed.

- (a) All applications by aircraft.
- (b) All foliar spraying or dusting.
- (c) Moth proofing by the hot acid dye bath method or related methods in which residues are discharged into waterways or settling ponds.
- (d) All uses, whether by homeowners or pest-control operators, in homes, barns, poultry operations or other structures occupied by humans or livestock.
- (e) Use upon turf (including lawns and non-grazing grassed areas) except as supervised or controlled by trained or licensed pest-control operators, greenskeepers and nurserymen.
- (f) Any use which involves application to streams, ponds, lakes, flooded areas or any other aquatic environments.

6. Specific uses of aldrin and dieldrin which we believe to be valuable and not harmful include:

- (a) Direct applications to soils.
- (b) Seed treatments, when the treated seed is labelled "not for food use".
- (c) Dipping of plant roots or tops during transplantation.
- (d) Treatment of foundations, by current procedures, for termite control.
- (e) Use of treated hot-caps.

7. Because our recommendations are based upon evidence which, although the best available, is still not complete; we recommend that the environmental and economic effects of the proposed restrictions be reviewed 5 years after their imposition. By that time, the completed results of recommendations 1, 2, 3 and 4 should be available.

11. Cancer is a major and increasing cause of death and morbidity in man. It imposes upon society an immense burden of death, suffering, and economic loss.

12. Chemical carcinogenesis has two key characteristics, irreversibility of effect, and long latent period between initial exposure and manifestation of symptoms. In principle, no dose of a chemical carcinogen is too small to induce cancer in susceptible individuals. Some cancers do not develop until late in life—in man, usually 20 and sometimes 30 or 40 years after initial exposure.

13. Chemicals known to cause cancer in man have been identified only through epidemiological studies, either in the general public, or in occupationally exposed workers. In the case of aldrin/dieldrin, epidemiological studies in the general population are not possible because there are no clearcut differentials of exposure and because the period of exposure has been too short. A study of occupationally exposed workers, carried out by the Shell group of companies, is of no value, from an epidemiological standpoint, as a carcinogenicity study because the number of workers studied was too small, the period of observation was too short and only active male workers were studied. As with most chemicals, it is therefore necessary to rely on experiments with animals to determine the potential carcinogenic hazard of aldrin/dieldrin to man.

14. The use of experiments with animals to screen chemicals for potential carcinogenic hazard to man is accepted by the scientific community and by public policy-making agencies in the United States. Chemical carcinogenesis in animals provides a very close parallel to chemical carcinogenesis in man. All chemicals known to cause cancer in man except arsenic which is under study also cause cancer in animals, especially rats and mice. The pathological development of chemically induced tumors in animals and in man is very similar. However, human populations are more variable than the strains of animals usually used in laboratory tests, and some individuals are likely to be correspondingly more susceptible.

15. Chemical carcinogenesis is a specific biological process which is induced by only a relatively few classes of chemicals. It is not true that all chemicals induce cancer at sufficiently high doses. Most, probably all, chemical carcinogens that have been adequately tested cause cancer in more than one species of animal. It is not true that there are "species-specific" carcinogens. Also, it is not true that there are "strain-specific" carcinogens, but some strains of mice are especially susceptible to induction of certain kinds of tumor.

16. Transplantability of tumors and/or metastasizing to other organs provide proof that chemically induced tumors are "malignant"; however, all chemical tumorigens should be regarded as potential carcinogens.

17. Guidelines for conducting acceptable experiments on chemical carcinogenesis in animals have been recommended by expert professional committees. The mouse and the rat are the preferred experimental animal species, both because their relatively short lifespan permits lifetime testing within a reasonable period of time, and because the pathological development of tumors in these species is particularly well known and understood.

18. A number of adequately conducted experiments have shown conclusively that aldrin and/or dieldrin induced cancer in 5 different strains of mice, and, perhaps, in the rat.

19. Reported carcinogenicity tests with aldrin and dieldrin in dogs and monkeys were carried out for too short a period to draw any definite conclusions, but pre-can-

cerous lesions were observed in the livers of the dogs. No adequately conducted carcinogenicity test with aldrin or dieldrin in any species of animal has given negative results.

20. In the experiments with mice, aldrin and dieldrin induced cancer primarily in the liver, but in some experiments significant incidence of cancers of the lung and other organs was reported.

21. Tumors produced by aldrin and dieldrin in mice have been diagnosed by expert pathologists as unequivocally malignant. In some experiments tumors metastasized to other organs, or were successfully transplanted to other hosts, providing further proof of malignancy. In at least some experiments, malignant tumors produced by aldrin and dieldrin significantly shortened the lifespan of the experimental animals. In the most extensive series of experiments, carried out by Shell research scientists, the incidence of liver and other tumors in mice was clearly dose-related. A significant increase in the incidence of liver and other tumors was observed at the lowest dose tested, 0.1 ppm in the diet.

22. Even a limited exposure to aldrin/dieldrin for only a few weeks early in life led to a significant increase in liver tumors in mice, despite cessation of exposure.

23. None of the reported experiments involved exposure of the experimental animals to aldrin/dieldrin prior to weaning, although younger animals and fetuses *in utero* are likely to be more susceptible to these agents.

24. Dieldrin induces enzymes in the liver which may activate certain environmental carcinogens. A threshold level of dietary dieldrin for induction of these enzymes in man is not known.

25. There is no scientific basis for the existence of a "threshold" or "no-effect" level of exposure of an animal population to a chemical carcinogen. It is impossible to establish a "safe" level of exposure of aldrin/dieldrin to man.

26. Aldrin/Dieldrin have been found to be carcinogens in the mouse as a result of adequately conducted tests in laboratory conditions. They pose a carcinogenic hazard to man.

27. Many kinds of insects spend at least part of their lives in the soil. Of the thousands of insects in or on our soils, only 20 or so are classed as pests of corn. Except for a few species, they are general throughout the corn-growing areas of the United States. While most of the important soil insect pests are found over broad areas, usually only one or a few at a time are of significant economic importance in an individual field. The area, population dynamics, weather, soil type, crop rotation and general agronomic practices will influence the buildup of individual destructive species.

28. A common characteristic of all soil insects is their four-stage life cycle: (1) Egg, (2) larvae (worm or grub), (3) pupae (resting stage) and (4) adult (beetle, moth or fly). Eggs are laid by the adult female in areas suitable to that species. Northern corn rootworm female beetles will lay their eggs in cornfields. Female "click" beetles (adult wireworms) usually seek out grassy areas so the young larvae will have sufficient food. However, in Iowa an annual species has been reported to lay eggs in only the bare spots in fields. Where eggs are laid plays an important role in what insects will be present in the spring corn crop as farmers can plant corn following many crops or sods. Eggs hatch into larvae which are commonly called grubs, worms or maggots. With the group called soil insects, this is the stage that usually causes the most damage except for moths notably the seed-corn beetle. Most of the larvae, with the exception of the Northern

and Western corn rootworms, have food preferences other than corn. Most are general feeders and when their main food supply is removed they readily adapt to corn. As larvae mature they enter the pupal stage of growth. It's here they complete the change from larvae to adult beetles, or moths or flies. A few of the adult soil insects are also destructive.

29. The corn soil insects which presently can or do cause injury of economic significance are as follows:

(a) **Wireworms:** *Melanotus* sp., *Conoderus* sp. and *Horistonotus* sp. and other species of the family *Elatridae*. Wireworm species attacking corn may differ some in specific areas but in general they all cause similar damage to seed and young plants. *Melanotus* sp. are most common throughout corn areas and pose the most problems for corn growers. Most of the damaging wireworm species have a life cycle from egg to adult of 2-6 years. The life span appears to be longer (4-6 years) in colder climates and shorter (2-3 years) in southern areas. The *Conoderus* sp. is an annual wireworm laying eggs in grain stubble which has not been second cropped. These wireworms are most prevalent in the southeastern United States but are becoming more of a problem in the central Corn Belt. Adult wireworms (click beetles) show a preference for sod areas and eggs may be laid in pastures, grain stubble, hay fields, weedy row crops and other grassy areas. When sod or other grassy areas are tilled for corn the next spring, the worms feed on the corn seed and young corn plants as their other food diminishes with the elimination of weeds and grass. Because eggs are laid each year in grassy fields, wireworms with more than a one-year cycle may be present in any stage. When populations are heavy they may completely destroy not only the original planting but subsequent replantings. Wireworms like and need moist soil and will tend to follow the moisture table in the ground. In a wet spring they will be more of a problem than in a dry one. Wireworms will tunnel into newly planted seed and kill the germination. They will also bore into the base of young corn plants below ground killing the growing point in the corn plant. The newly-emerged plant starts to wilt and die from the center out and finally the entire plant dies or produces suckers which bear no ears. In large numbers, entire fields can be lost. Planter box treatments and row treatments of aldrin are not as effective as broadcast applications and may not provide adequate control under population stress.

(b) **Cutworms.** Black cutworm, *Agrotis ypsilon* (Rottentburg); Glassy cutworm, *Gymnoides devastator* (Brace); Bronzed cutworm, *Nephilodes emmedonius* (Crawley); Dingy cutworm, *Feltia subgothica* (Haworth); Bristley cutworm, *Lacinyolia renigera* (Stephens); Clay-backed cutworm *Agrotis gladiaria* (Morrison); Sandhill cutworm, *Euroa deteroa* (Walker). The black cutworm is by far the most widely found and the most damaging. Most of the problem species are surface feeders except for the glassy cutworm which is a true subterranean cutworm. Cutworms will generally feed on the newly-sprouted plants. Moisture in the soil and atmosphere conditions help to control the feeding pattern. When the soil is moist or wet and nights are cool with high humidity, the cutworms will feed on the surface cutting off the corn plants. As the soil dries the cutworms may not surface, feeding only below ground, living in the moist soil. Much of the life cycle and biological history of the cutworms is still unknown. However, in general, they tend to overwinter as nearly full-grown larvae. Adult moths tend to lay eggs in grassy, wet areas. Black cutworms not only overwinter as larvae but migrate into the Corn

Belt area from the south in March and April. Cutworm damage is generally associated with poorly drained river bottom land, heavy soils and low wet spots in upland fields. It is also more extensively found in first year corn following sod or legumes. Failure to notice a cutworm problem early may result in a lost field or part of a field that must be replanted.

(c) **White grubs:** *Phyllophaga* or *Hachnos-tenna* spp. These are the most common grub pests. They are the larval form of the common May and June beetles. The beetles prefer grassy areas such as pastures, coll bank land and hay fields. These differ from annual grubs by having life cycles that take 2-4 years to complete. Three-year cycles are most common. White grubs appear most often in cornfields when sod ground or grassy areas are spring plowed. With their 2-4 year life cycle, they can pose a problem to the farmer more than one year. However, the most destructive damage occurs the first year after sod. Damage comes in the form of plants wilting and "drying up." The larvae prune the roots and the plant literally dies of thirst.

(d) **Corn Rootworms.** Northern Corn Rootworm, *Diabrotica longicornis* (Say); Western Corn Rootworm, *Diabrotica virgifera* (Le Conte); Southern Corn Rootworm, *Diabrotica undecimpunctate howardi* (Barber). The Northern corn rootworm inhabits the entire Corn Belt while the Western can be

found in damaging numbers in Colorado, Nebraska, Kansas, South Dakota, Minnesota, Iowa, Missouri, Illinois, Indiana, and Wisconsin. The first Western beetles were found in Indiana in 1971. Southern corn rootworms migrate north each year and are usually more of a problem in the southern area of the Corn Belt or in southern corn-producing areas. Northern and Western corn rootworm adults lay their eggs in cornfields during August and September. The eggs overwinter and hatch the following spring in late May and June. If corn is present they feed and survive. The life cycle is broken by rotation as Northern and Western rootworms need corn to survive. Southern corn rootworms, on the other hand, overwinter in southern areas and fly north each year, laying eggs in the spring in planted cornfields. In some of the southern corn-producing areas, two generations a year may occur. After hatching, the larval form of the rootworm begins feeding and tunneling into roots. In severe cases corn may wilt and die from root pruning. Usually, however, the root pruning results in weakened stalks that are subject to lodging and yield reduction. Western and Northern corn rootworms are generally resistant to chlorinated hydrocarbons.

30. The influence of previous crops on the prevalence of soil insects in corn is as follows:

Underground corn insects	Other major factor	Year following meadow				
		1st	2d	3d	4th	5th
Wireworms.....	Soil moisture.....	XX	X			
Billbugs (3 species).....		XX				
Cutworms (2 species).....	Flooding, grass.....	XX	X	X	X	X
Sod webworms (5 species).....		XX				
Grape colaspis (2 species).....		XX				
White grubs (2-3 species).....	Soybeans.....	XX	X	X	X	X
Seed-corn maggot.....	Organic matter.....	XX	X	X	X	X
Cornfield ants.....		XX	X	X	X	X
Corn root aphids.....		XX	X	X	X	X
Southern corn rootworm.....		XX	X	X	X	X
Northern and western corn rootworm.....		XX	XXX	XXX	XXX	XXX

31. Registered and effective alternatives to Aldrin for control of rootworms in corn are Furadan, Thimet, Dasanit, Dyfonate, Diazinon and Mocap. Counter has a temporary use permit and is expected to be registered for rootworms and wireworms before the 1975 crop year. Dow Chemical Company is presently seeking registration of Dursban. Insecticides which control resistant rootworm will also control nonresistant rootworm.

32. Diazinon is registered as a preplant control method for the cutworm and an application is pending for Furadan. Registered and effective insecticides for post emergent treatment are Carbaryl and Dylox baits or sprays and toxaphene sprays.

33. Registered and effective alternatives to Aldrin for control of wireworms in corn are Dasanit, Diazinon, Dyfonate and Furadan. An application is pending for registration of Mocap. Thimet is labeled for reduction of wireworms.

34. No significant macroeconomic or microeconomic consequences will result from the suspension of aldrin for use on corn in 1975.

35. The Fuller Rose Beetle was recognized as a pest of Florida citrus in 1953 when large numbers were observed in several groves in Indian River and St. Lucie Counties. Since that time, this pest has been collected from 30 counties in the state. Its life cycle adheres to the 4-stage pattern inherent in beetles consisting of the egg, larvae, pupa, and adult. Eggs are deposited above ground, the hatching larvae drop to the ground and enter the soil to feed for 10-11 months, as they mature, on roots. Pupation occurs in the soil and adults emerge from the soil to

remain above ground feeding on the foliage, mating, and laying eggs. It is presently considered univoltine, producing but one generation per year. The adults feed on the young leaves of citrus and when in great numbers, cause serious setback of young plants. Adults also feed on the flowers and on rind of young fruit, resulting in unsightly peel scars when the fruit matures. Occasionally, young shoots may be devoured. The most serious injury by the pest is produced by the larvae which destroy the plant roots.

36. Affected trees have sparse foliage that may become chlorotic and wilt. When larvae are numerous, young plants may be killed in a short time or dwarfed. Older trees are more resistant, but do not grow well, are unthrifty in appearance, become poor yielders, and occasionally die. Since the damage caused by the larvae takes place underground, it often remains unnoticed until the plants start to wither and 'die back'.

37. Although the Fuller Rose Beetle has been collected from 30 counties in Florida, its economic significance is very circumscribed geographically. Of the 877,000 acres of citrus in Florida, the rose beetle is only present in numbers sufficient to commence to reduce yield on between 10,000 and 50,000 acres. The area of significant infestation is essentially the Indian River area of the Southeastern seaboard of Florida, an area characterized by poor internal soil drainage, a high water table, and consequently unusually shallow citrus root systems. A 1955 study indicated that in a typical Indian River grove, 75 percent of the feeder roots of citrus trees were located within 18 inches

of the top of the ridge of soil upon which citrus trees are usually planted in that area. Citrus trees won't extend their roots into waterlogged soils. The result is trees distinguishable by particularly restricted root systems with unusually limited supplies of feeder roots. These systems are less able to make do with decreases in root productivity resultant from insect damage which would be insignificant in other regions within the state.

38. Less than 5 percent of the total citrus acreage in Florida has ever been treated with any soil insecticide for control of any insect, and even within the Indian River Fuller Rose Beetle trouble region only 20 percent of the acreage has been so treated. The Fuller Rose Beetle is one of the more minor citrus pests in Florida. However, in some cases, the Fuller Rose Beetle is present in an area in such numbers that citrus yields are substantially reduced. In most of those instances, 2½ pound per acre treatments of aldrin twice during a growing season will provide adequate pest control. Citrus yields are reported to have markedly increased after insect damage and such treatment.

39. The theory behind aldrin/dieldrin soil treatment for citrus beetle control is that the chemicals should be incorporated in the surface of the soil surrounding citrus, creating a toxic barrier. Beetles may be killed during two stages of their development, when as larvae they drop from aerial regions of vegetation and enter the soil to feed, and when as adults they emerge from the soil to remain above ground, feeding, mating, and laying eggs. In a series of threshold tests in 1957 and 1958, aldrin provided approximately 78 percent control of rose beetles.

40. Aldrin/Dieldrin is overused on citrus to some extent, in the sense that it is unnecessarily utilized. Citrus growers can tolerate some crop loss before pesticide application is economically justified, yet before application of these chemicals they generally do not consciously formulate economic thresholds for determining when aldrin/dieldrin pays for itself in terms of insect control. In some instances, and particularly in the case of nurseries, these chemicals are employed as preventatives or insurance before insect damage is discerned. Many growers attempt to eradicate insect pests through applications of aldrin/dieldrin rather than reducing them to insignificant levels. In certain instances, however, the rose beetle substantially reduces crop yields absent the use of aldrin/dieldrin and without alternative means of control. In terms of the entire Florida citrus industry these instances are relatively rare.

41. The Coca-Cola Company, as one of Florida's largest citrus growers, does not use aldrin/dieldrin, receives fruit from groves located in areas where root weevil infestations occur, yet carries on profitable operations. The Company's decision not to utilize these chemicals was substantially the result of worker pressure resulting from possible health and safety problems involved in their use.

42. In view of the life cycle pattern of the rose beetle, whereby these insects generally mature from a larvae stage in the soil into adult weevils and then climb up weeds or citrus trunks or branches to lay their eggs, there is a large potential for disruption of the pest problems through cultural methods. If weeds and low-hanging citrus branches are cut down, major routes of access to the egg-laying areas of citrus will be closed off to the weevils. Particularly in California, certain sticky bands have been placed around trunks and have been effective in reducing the alternate path of weevil ascent. If the

adult insects can effectively be denied such ascent, their damage to the aerial regions of citrus trees can be minimized and the insects' procreative habits and efficiency can be stunted. Such means of pest control have not been extensively pursued in Florida.

43. California does not recommend the use of aldrin/dieldrin for control of the Fuller Rose Beetle on its very substantial citrus acreage although such insect also constitutes a pest of citrus in that state. Instead, the California spray program recommends malathion for control of the Fuller Rose Beetle, and both sevin and parathion to help with that beetle and to control certain other insect pests of citrus. Even within Florida, parathion and Guthion, registered alternatives, are recommended as part of that state's spray and dust program. Various foliar sprays, most of which are already used in the Florida citrus program, some as often as 4 to 6 times a year, provide good initial kill of the adult weevil at issue. Included among these are malathion, furadan, sevin, Guthion, orthene, Iannate, Supracide, and phosphamidon.

44. Suspension of the use of aldrin/dieldrin on citrus would not result in detrimental macroeconomic consequences. The need for treatment of the Fuller Rose Beetle is very confined, cultural and insecticidal alternatives are available and any adverse consequences will very easily become translated into a relatively minor shift in the supply-demand equilibrium. Nor are substantial microeconomic consequences anticipated.

45. No significant macroeconomic or microeconomic consequences will result from the suspension of aldrin or dieldrin until completion of the cancellation proceedings for all uses involved in these suspension proceedings in addition to corn and citrus.

#### CONCLUSIONS

I. Carcinogenic activity of a chemical can be detected by observation in man and by bioassay in experimental animals. The conclusive detection of the carcinogenic effect of a chemical by direct observation in man is extremely difficult. It may take 20, 30 or more years for a population to respond to a new chemical exposure with a significant increase of cancer cases due to the long latent period involved, that is, the time between exposure to a carcinogen and the manifestation of the effect, namely the tumor. In addition, the frequency of cancer in the population is very high, so that in order to demonstrate the existence of an increased risk related to a given exposure one needs a well-defined large population with known history of exposure and another comparable control population without that exposure. In the case of materials that become contaminants of the whole population, such as dieldrin,<sup>5</sup> this approach is almost impossible or nonapplicable.

Consequently, in the case of a food contaminant such as dieldrin where the identification of a non-exposed control population is difficult or impossible, the chances of detecting a carcinogenic effect by observa-

<sup>5</sup> Surveys conducted by the Food and Drug Administration show that dieldrin is found in as much as 96 percent of all meat, fish, and poultry "composite samples" tested, and 85 percent of all dairy product "composite samples" tested. In addition, EPA surveys indicate that dieldrin is in approximately 90 percent of all air samples taken nationally and residues of dieldrin have been found in virtually all of the humans included in the EPA human monitoring survey. While the FDA surveillance program found less dieldrin present than in its market survey, the amounts found were still significant.

tions in man are extremely remote.<sup>6</sup> The human epidemiologic study by the Shell group of companies involving workers at the Pernis, Holland Plant<sup>7</sup> is admitted by the Shell Chemical Company not to be an adequate epidemiological study for cancer and was clearly so described by expert epidemiologists in these proceedings. In short, this study only examined a very small number of individuals for a period of time totally inadequate to assess a change in cancer risk extending over most of a lifetime.

For all practical purposes, the detection of carcinogenic activity of new chemicals is based on animal experimentation. All chemical substances or mixtures that have been proven carcinogenic by direct observation in man have also been shown to be carcinogenic in experimental animals with the exception of arsenic which is still under experimental study. Because of the difficulties of epidemiological studies on human carcinogenic exposures, there are usually no data which provide us with any evidence on whether cancer in man is caused by a chemical that has been shown to be carcinogenic in other mammalian species.

Bioassays are always performed on a number of animals which is extremely small when compared with the millions of humans exposed to most environmental carcinogens. Such studies can only detect carcinogenic effects resulting in fairly high incidences and the number of animals used in the tests is the main limiting factor of the sensitivity of the test system. The sensitivity of currently used animal bioassay systems is in most instances very limited. Therefore, any chemical which is detected as carcinogenic by such rather insensitive test systems represents a warning signal of great significance.<sup>8</sup> In fact, while it is customary or required that more than one species of laboratory animal be tested for carcinogenicity, a positive, confirmed finding as to one species is of extreme and grave importance.<sup>9</sup> This is reflected in the Delaney Clause or Amendment to the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 348(c) (3) (A)) which provides that no food additive "shall be deemed to be safe if it is found to induce cancer when ingested by man or animal" and which "is generally intended to prohibit the use of any additives which under any conditions induce cancer in any strain of test animal." *Bell v. Goddard*, 366 F.2d 177, 181 (7th Cir. 1966). Conversely, negative findings in carcinogenicity tests are of little significance in view of the insensitivity of the system.

II. Carcinogens are chemical, physical, or biological agents, exposure to which, of

<sup>6</sup> The detection of the great cancer "epidemic" caused by cigarette smoking was made possible by the existence of a non-exposed population living in otherwise comparable conditions with those exposed. Also, besides the comparison of smokers and non-smokers, a quantitative estimate of the amount of cigarettes smoked make it possible to identify groups of population at different risks.

<sup>7</sup> Jager, Aldrin, Dieldrin, Endrin, and Telodrin: An Epidemiological and Toxicological Study of Long-Term Occupational Exposure (1970).

<sup>8</sup> It should be stated at this point, perhaps, that a relatively small number of chemicals, 700-800 or a maximum of 1,000, have proven to be carcinogenic in laboratory animals. It is not true that all or most substances can cause cancer in laboratory animals depending upon the dose applied.

<sup>9</sup> This is so, in part, due to the nature of cancer, that is, its irreversibility and long latency period following the initial exposure to the carcinogenic agent.

animals or humans, increases the probability of induction of tumors or neoplasia. This may be manifested by an increase in the number of individuals developing the tumor, an increase in the number of tumors in each individual, a decrease in the age at which the tumors appear, that is, reduction in the latent period of tumor induction, any combination of the above effects and perhaps the appearance of unique or unusual tumors.

It is patent, it seems to us, that on the basis of our current knowledge or "conventional wisdom" the evidence is overwhelming that aldrin and dieldrin are carcinogens in the mouse.<sup>20</sup> This is established by the testimony of extremely well qualified and renowned experts in the field of carcinogenesis such as Drs. Saffioti, Heston, Farber, Epstein and others based on many laboratory tests of the mouse.<sup>21</sup> In fact, there are probably few pesticides whose carcinogenicity in mice is so thoroughly and conclusively documented.

This was, in effect, the conclusion also of the International Association for Research in Cancer which concluded in Volume 5, Monograph on the Evaluation of Carcinogenic Risk of Chemicals to Man, as follows:

Dieldrin was tested by the oral route only in mice and rats. The hepatocarcinogenicity of dieldrin in the mouse has been demonstrated and confirmed in several experiments, and some of the liver cell tumors were found to metastasize. A dose-response effect has been demonstrated in both sexes with an increased incidence in females at the lowest dose tested, 0.1 ppm in the diet. (Corresponding to about 0.015 mg/kg bw/day). In mice there is no evidence of carcinogenicity in organs other than the liver.

The available data in rats have not provided evidence of carcinogenicity at levels of up to 50 parts per million in the diet. (Corresponding to an intake of about 2.5 mg/kg bw/day).

The experiments in dogs and monkeys were too limited in duration and/or group sizes to allow any conclusion to be made.

Further, witnesses for the Shell Chemical Company admitted at the hearing that the incidence of liver tumors in 5 different strains of mice evidenced statistically significant increases resulting from the oral dietary administration of dieldrin and many of the tumors in question have been diag-

nosed as unequivocally malignant.<sup>22</sup> The mice were of in-bred strains and an out-bred and hybrid strain. The primary organ involved is the liver, but there was in addition a significant increase in tumors in the lung and other organs in some experiments. Further, positive dose-relationship in the incidence of liver tumors primarily and in lung and other tumors was manifest. Liver tumors metastasized to other organs within the animals and were successfully transplanted and, in at least some experiments, dieldrin shortened the latent period for tumor induction as well as increasing the incidence of tumors. Other evidence of dieldrin's carcinogenicity in the mouse is also present.<sup>23</sup>

The fact that dieldrin increased tumor incidence in mice of naturally occurring tumors does not alter our conclusions with respect to the findings in the mouse or their significance for man, to be discussed later in these Conclusions. As explained by Dr. Walter E. Heston, Chief of the Laboratory of Biology of the National Cancer Institute, a geneticist with 35 years in cancer research in experimental animals as a basis for the problem of cancer in man and the "father" of strains of test animals.

A carcinogen, therefore, should not be defined only as something that produces tumors in a strain in which such tumors never occur without the carcinogen. Such a strain probably does not exist. A carcinogen is a substance that can increase the probability that a tumor will arise. It increases the incidence of a tumor in a strain and usually reduces that latent period of the tumor. In testing a substance for carcinogenicity, the aim, therefore, is to ascertain whether it can significantly increase the incidence of any tumor, and the choice of strain for demonstrating this is usually not the most susceptible, nor the most resistant but one with an intermediate genetic susceptibility.

In addition, Dr. Heston further testified that not all strains of mice or of any other species have the same incidence of spontaneous tumors and that "One cannot therefore state categorically that the mouse—i.e., all strains of the mouse—present an unacceptably high incidence of spontaneous tumors." As emphasized by Dr. Heston, well controlled experiments have been run with at least 5 strains of mice having different incidences of spontaneous liver tumors and it has been demonstrated from all strains that aldrin and dieldrin are carcinogenic in mice. Dr. Heston goes on to say that "Knowing this, and knowing the general biological similarity of mice and other mammalian species, including man, we can reasonably expect that in a population of human being exposed to Aldrin/Dieldrin, cancer of some kind will occur in some individuals, and that these individuals would not have been afflicted in the absence of these compounds."

<sup>20</sup> There is no valid distinction between the induction of benign or malignant tumors in determining the carcinogenicity of a compound and Shell Chemical Company and its pathologist witness employed at Tunstall do not contend that there is although some of the cancer experts testifying on behalf of Shell appear to make such distinction.

<sup>21</sup> The evidence in these consolidated suspension proceedings went beyond the evidence available to and the conclusions of the IARC quoted above. In addition, our conclusions are not affected by the last minute revised data differing from prior published studies adduced by the Shell Chemical Company. Also, time is lacking for an analysis of each of the mouse experiments involved and no useful purpose would be served thereby.

The testimony and exhibits of the additional experts in carcinogenesis presented by respondent and the Environmental Defense Fund, Inc. convincingly support the view that the mouse is, indeed, an appropriate test animal for predictability to man. In short, most chemical carcinogens that have been adequately tested in different species show that they can produce tumors in all, or several of them. While the target organ may vary from species to species the concept of species specific carcinogens is not well supported. The mouse is probably the most widely utilized test animal, is the standard reference test animal in recently established and large scale programs of the United States Department of Health, Education and Welfare at the National Center for Toxicological Research for quantitation of toxicological and carcinogenic risk, and was extensively utilized, perhaps reluctantly, by the laboratory of the Shell organization at Tunstall, England.<sup>24</sup>

The following analysis by Dr. Umberto Saffioti, Associate Director for Carcinogenesis, Division of Cancer Cause and Prevention, National Cancer Institute, a world renowned expert whose initial testimony was cleared and approved by this organization and whose demeanor and knowledge during his several days of cross-examination especially impressed us, is helpful in this regard:<sup>25</sup>

The argument that certain mouse liver carcinogens are "species specific" was recently reviewed in a paper by Tomatis et al.<sup>26</sup> entitled "The predictive value of mouse liver tumour induction in carcinogenicity testing—A literature survey." The authors searched the literature to make a list of chemicals that were reported to have induced liver tumors in mice: 58 chemicals were included in this list. The literature was then examined for reports on tests of these chemicals in two other species, rats and hamsters. Of these 58 mouse liver carcinogens, only 18 were reported to induce only liver tumors in mice, while the others produced also tumors in other organs. Of the 18 that were reported to produce only mouse liver tumors, none was reported to have been adequately tested in the other two species with negative results. Of the 58 chemicals which were reported to induce tumors of the liver, or of the liver plus other organs, in the mouse, only 16 were listed as having been tested and found negative in one of the other species (rats or hamsters); however, of these 16, 9 were reported as negative in rats but were not tested in hamsters, one was reported as negative in rats but was positive in hamsters, 5 were reported as negative in hamsters but were positive in rats. Thus only one compound, positive in mice, was reported as having been tested in both rats and hamsters with negative results: this compound is benzo[a]anthracene which not only causes hepatomas by feeding in mice, but also causes lung tumors, and was found to be carcinogenic also by other routes of administration in mice, causing tumors of the lung, skin and bladder. Although this compound was reported as negative in rats and hamsters, it is important to state that it

<sup>24</sup> Also significant is the fact that an experimental study involving approximately 25,000 mice, was established using a carcinogen which is known to produce liver cell tumors in mice as well as a variety of other tumor types in mice and in other species.

<sup>25</sup> In fact, much of the preceding section of these Conclusions was based on the testimony of Dr. Saffioti, confirmed and corroborated by the testimony of many other cancer expert witnesses.

<sup>20</sup> Shell Chemical Company does not and, in reality, cannot dispute such conclusion. The position of Shell herein is, instead, to the effect, in part, that the mouse is not an appropriate animal in this connection, a contention we shall consider later in these Conclusions. The position of the Shell Chemical Company has been shifting on the issue of the mouse liver tumor and its significance and is also not in complete agreement with its witnesses. This makes it extremely difficult to prepare a decision in the very short period of time available, the preparation of which had to begin, therefore, prior to the filing of briefs or even the closing of the record, and may be prejudicial to the other parties. Consequently, this decision is responsive to what we had believed Shell's position to be and also to what it now is. We note, for example, that in its brief, Shell carefully avoids the word "cause" in connection with dieldrin and tumor incidence contrary to what was stated on the record of the hearing as to its position.

<sup>21</sup> While aldrin use accounts for nearly 95 percent of the total use of the 2 compounds, aldrin breaks down rapidly into its metabolite dieldrin. Consequently, residues found in man and the environment are principally dieldrin residues and thus the hazards of dieldrin are of prime significance.

was not adequately tested in rats and hamsters at all. There are no reports of such tests by chronic feeding in rats or hamsters, nor of any long-term tests with continuous administration in large numbers of animals, with adequate pathology. The only feeding study in rats on this compound was published in 1945<sup>22</sup>; it states that 2 out of 3 male rats were found to have 3 hepatomas each. No hepatomas were found in 3 females, nor in different groups of controls. Although inadequate, this report suggests the possibility of liver carcinogenicity in rats. So the conclusion is that no chemical was found to have been adequately tested and shown to produce liver tumors in mice but no tumors in the other two most common species of test animals. As a matter of interest, Tomatis et al. have limited their discussion to the correlation of test results as presented in the literature, without any critical evaluation of the adequacy of the tests used to enter a classification of positive or negative into their tables. Such an analysis would show that many tests in rats or hamsters, reported as negative, are really quite inadequate and should be rejected as "negative evidence."

The survey by Tomatis et al. is, however, sufficient to disprove the proposition that the induction of liver tumors in mice is a tissue response that is not representative of carcinogenic effects such as are seen in other organs or other species. A few people have proposed that the carcinogenic response of mice is not representative of that of other species including man. No scientific basis could be found to support this argument.<sup>23</sup>

The Report of the 1973 Joint Meeting of the FAO Working Party of Experts on Pesticide Residues and the WHO Expert Committee on Pesticide Residues, which is not the official view of WHO but only that of the participants of the expert committee, stated, in part, as follows:

"... The Meeting agreed that there is a serious lack of knowledge regarding the processes involved in the development of liver tumors by mice and that it would be unwise to classify a substance as a carcinogen solely on the basis of evidence of an increased incidence of tumors of a kind that may occur spontaneously with such a high frequency."

In general it was felt that if the exposure of mice to a pesticide was associated with an increased risk of the development of liver tumors, long-term feeding studies on at least one other species should be required. Carcinogenicity tests in two species other than the mouse would be regarded as appropriate where it was evident that man might be exposed through food to a dose level close to one that increased the incidence of liver tumor in mice.

<sup>22</sup> It should be pointed out at this point that the Tomatis article further stated that "The present review indicates that the induction of liver tumors in the mouse should be considered as valid as the evidence obtained in the rat and/or the hamster at any site. It does not imply that the chemical which has been tested with negative results in one or more species should be automatically regarded as having a possible carcinogenic effect on man solely on the grounds that it induces liver tumors in the mouse. Conversely neither does it imply that negative results in the mouse must be regarded as proof of safety." Aldrin and dieldrin have not on the basis of adequately conducted and reported experiments at proper dose levels been tested with negative results in the rat and do not appear to have been tested in the hamster at all.

The meeting agreed that, although the above considerations might be useful for general guidance, it would be essential for each pesticide to be considered and assessed individually.

This does not detract from the testimony of Drs. Heston, Saffioti and others with respect to the significance of mouse liver tumors. The FAO/WHO report recognizes that the matters there stated "might be useful for general guidance" but that each pesticide should be considered and assessed individually. It appears to us that the quoted material set out above from the FAO/WHO report is basically the view of Dr. Roe who testified on behalf of Shell Chemical Company herein and who was one of the few or, perhaps, 2 cancer experts on the expert committee. He admitted at the hearing, in effect, that the members of the expert committee can determine the report that is issued. For the reasons stated herein for, in effect, giving little weight to Dr. Roe's testimony in this connection, we similarly so regard the FAO/WHO report.<sup>24</sup> We just do not believe, on the basis of this record, that it represents the current state of our knowledge or the accepted scientific view. We are, instead, impressed by positive findings in 5 different strains of mice with differing incidences of spontaneous tumors. As we stated above, inbred, outbred and hybrid mice were involved in the experiments. (See also discussion which follows on other tumors of the mouse, and the rat). Moreover, Shell's own experiments clearly demonstrate how natural variability can be surmounted and an unequivocal result be obtained. For example, from a consideration of the frequencies of malignant hepatic neoplasms, as diagnosed by Shell's pathologists, it is apparent their spontaneous incidence in control animals is neither high nor variable, while the dieldrin treated groups consistently show marked and often high incidence of such malignancies.

Shell Chemical Company further contends that a large variety of factors, chemical and nonchemical, can greatly alter the incidence of tumors in the liver in the mouse and, thereby, challenges the appropriateness of the mouse as a test animal and its applicability to man. Specifically, Shell has reference to the fact that sex, hormones, diet and other factors can influence the occurrence of cancer in test species. This is well known to cancer investigators and we believe the following answer by Dr. Heston to the matters raised by Shell witnesses disposes of some of the contentions of Shell's witnesses in this regard.<sup>25</sup>

"... Besides those noted by Dr. Roe, there are probably many other factors, as yet undiscovered, which can affect the incidence of tumors, and this likelihood applies not only to hepatomas, but also to other tumors as well. And, given a fundamental biological similarity between the mouse and other test species, it is obvious that many of the factors cited by Dr. Roe and others as influencing the incidence of tumor formation in the mouse would have a similar effect on

<sup>24</sup> Similarly, the only cancer expert on the Administrator's advisory committee was introduced as a witness for the Shell Chemical Company, and we feel that the record herein totally overcomes his testimony with respect to the significance of mouse liver tumors and the standard by which cancer risk to man is determined.

other species as well. It is merely because we have studied the mouse in greater detail than other species that there is a greater literature concerning spontaneous tumors in the mouse than in other test animals.

All of Dr. Roe's discussion of factors affecting tumor incidence, however, has absolutely no bearing on the question of carcinogenicity. Most simply put, the question is "Can the administration of Aldrin/Dieldrin to test animals result in some of their cells becoming malignant?"

This question is answered by selecting two groups of test animals which have been bred under the same conditions and which have similar genetic characteristics. Both groups should be alike with respect to sex; both groups should be tested at the same time in identical surroundings; both should be given the same nutrition. In all respects except one, in short, the animals of both groups should exist under the same conditions. The only difference is that on one or more occasions, one group will be exposed to a known quantity of the compound under test and the other will not.

Thereafter the incidence of tumor formation and other data will be noted, and through statistical analysis one can determine whether any increased incidence of tumors has occurred in exposed animals when compared to controls. If so, and if the difference in incidence is sufficiently great, we can reasonably attribute the increased incidence to exposure to the compound under test. We do not thereby conclusively prove that the test compound "caused" the elevated incidence, as Drs. Roe, Sternberg, Newberne and others would require; if we had to prove causation we could not establish any substance as carcinogenic even today. Rather we must and do make judgments as to carcinogenicity on the basis of statistically-significant differences in tumor incidence arising from valid experiments such as I have outlined above, and from other information at hand.

Whether the particular strain or species of test animal chosen has a high, medium or low incidence of spontaneous tumors is therefore irrelevant so long as animals are assigned without bias to test and control groups. The fact that diet can increase or decrease the incidence of tumors becomes irrelevant to long as both exposed and control animals are fed the same diet. All of the other factors cited by Dr. Roe and others similarly are irrelevant so long as they apply equally to control and exposed test animals.

Does the variability in the incidence of spontaneous tumors in the mouse make it an inappropriate animal for carcinogenicity testing? Do any of the other factors cited by Drs. Newberne, Roe, Stevenson and Thorpe lessen the value of the mouse in determining possible carcinogenic threats to human health? For the reasons I have given above, the answer is an emphatic no.

<sup>25</sup> It should be noted that the Shell employee witness with overall scientific responsibility for the toxicology programs in Shell's Tunstall laboratories testified that the laboratory tried to eliminate environmental biases as much as possible in the various mouse tests on the carcinogenicity of dieldrin and the record does not indicate any such biases in the mouse tests involved. Also, Dr. Heston's testimony set forth above with respect to the irrelevancy of the matters raised by Shell was echoed by other cancer experts herein. Further, variability in spontaneous tumor incidence is found not only in the mouse, but also in other species including man.

In this connection, it is helpful to set forth in detail some of the testimony of Dr. Arthur C. Upton, Dean, School of Basic Health Sciences, State University of New York at Stony Brook, New York, a noted cancer expert. He states as follows:<sup>20</sup>

The emphasis by Shell witnesses that knowledge of mechanisms must be defined before any agent can be considered carcinogenic, even though this agent has been demonstrated to induce carcinogenic effects in valid experimental systems, can only be regarded as misleading in extreme. In fact, in spite of a very considerable amount of research, the basic mechanisms of action of any single carcinogen have not yet been elucidated. This requirement of Shell would define away the entire field of chemical carcinogenesis.

It should be noted that the Delaney Amendment does not utilize the word "cause," but, instead, deals with food additives which "induce" cancer.

I would like to turn now to a discussion of the basis on which findings of carcinogenicity are made in animal experimentation. In particular, I would like to address the following argument: Even if an increased incidence of tumors is found in test animals after exposure to a particular compound, one cannot properly assert that the test agent "caused" the induction of such tumors; one can state only that a statistical association was demonstrated between administration of the compound and the elevated incidence of tumors. One must know the mechanisms by which a carcinogenic response is elicited before one can speak to the question of "causation" or label a test compound a "carcinogen".

I do not subscribe to this position. In carcinogenicity testing today we base findings of carcinogenicity on precisely these statistical associations that have been described above as inadequate, and I believe it not only proper but important that we do so. Given our present state of knowledge concerning the mechanisms of carcinogenicity, it may be some time before we can reliably establish the entire pathway from administration of a carcinogenic agent to the elicitation of a carcinogenic response. To require that such a pathway be established in detail before an agent can be labelled "carcinogenic" would be to adopt the ostrich-like position of ignoring facts which constitute obvious warning flags for human health.

A foremost reason why we cannot wait for a full explanation of mechanisms of carcinogenesis is because of their apparent multiplicity and complexity. It is no longer reasonable to assume that cancer results from a single factor; rather it appears that carcinogenesis is a multi-causal, multi-phased process in which genetic, hormonal, environmental, and other factors play varying roles in the elicitation of a particular carcinogenic response. At this stage of our knowledge it is true that we can make some generalizations concerning particular factors. We can say, for instance, that mammalian neonates appear to be more susceptible to the actions of some carcinogens than older animals; but even here one should note that the relationship of age to tumor incidence appears to vary with the type of tumor in most species studied. In man, for instance, some forms of cancer appear predominantly among children, while others seldom appear among the young yet increase exponentially with age in adults. It is because of these and other sharply differing patterns of cancer in-

cidence in man and other mammalian species that the process of carcinogenesis appears to involve a large number of variables and highly complex series of interactions. Hence it is doubtful that we will understand fully the mechanisms of even the simplest forms of carcinogenesis in the immediate future.

Because of incomplete knowledge concerning mechanisms, I also do not believe that distinctions between "carcinogens" and "co-carcinogens", or between "causative agents" and "enhancing agents" can be considered relevant today when ascertaining hazards to human health arising from carcinogens. In safety testing of carcinogens today we are concerned with one question: "Does exposure to the test agent result in a significant induction of tumors in exposed populations as compared to controls?" If so, then the test agent has elicited a carcinogenic response and must therefore be considered potentially hazardous to human health. Whether the agent actually is a *sine qua non* of the observed response or merely enhances a virus or some other factor found in the host animal is irrelevant unless and until we know that similar factors are not also found in man. Until we have such knowledge, we have no basis on which to make distinctions between "carcinogens" and "co-carcinogens" and "causative agents" versus "enhancing agents".

Given this lack of knowledge concerning mechanisms, I believe that a carcinogenic reaction in any species of test animal must be considered sufficient to describe the test compound as a carcinogen and so a threat to human health. I consider that a similar reaction in a second mammalian species is a confirmation of the carcinogenicity of the test agent, but it is not necessary before a finding of carcinogenicity and threat to human health can be made; and negative results in a second or even third species of test animal do not in my mind establish that the test agent is not a threat for human beings. Given the variation in human susceptibility to carcinogens, I believe it unreasonable to ignore a finding of carcinogenicity in any mammalian test species when considering possible effects on human health.<sup>21</sup>

We have limited our considerations above with respect to the carcinogenicity of dieldrin to the results in the mouse and specifically in the mouse liver. We think it is clearly a carcinogen solely on that basis. (See also Part III of these Conclusions). But, we are not restricted by the record solely to that organ in the mouse or solely to that test animal. While the effects of dieldrin were manifested primarily in the liver of the mouse, there was also statistically significant increases of tumors in the lung and other organs of the mouse in some of the experiments as published and also with the newly introduced but questionable revised data. Even with the revised data it is clear that dieldrin at low feeding levels, at either 0.1

<sup>20</sup>In addition, on cross-examination this witness indicated that matters such as casein and diet which affect tumor incidence in the mouse could conceivably be similarly carcinogenic in man under certain conditions. On the basis of our current knowledge, we clearly cannot state with certainty that the factors cited by Shell as influencing the occurrence of liver tumors in the mouse cannot similarly increase tumor incidence in man in the liver or elsewhere.

ppm or both the 0.1 and 1 ppm levels, can elevate the incidence of tumors at sites other than the liver and that this elevation is highly significant in either males or females or in both sexes, as demonstrated by Dr. Gross, a well qualified statistician and cancer expert, by conventional and accepted statistical analysis. These findings tend to corroborate the carcinogenicity of dieldrin in the mouse, as evidenced by the reaction of the mouse liver to dieldrin, the applicability of that finding to man and to weaken Shell's arguments based exclusively on the liver of the mouse.

Also, there is experience with the rat. We are hesitantly unwilling at this time to find that dieldrin is conclusively a carcinogen in the rat although there are indications that this is so especially when the chemical is tested at the lower dosages. This is the case, we believe, because of the effect of competing toxicity at the higher feeding levels. It can and should be stated in this connection, however, that while we are uncertain with respect to our failure to find that dieldrin is a carcinogen in the rat, we are certain, nevertheless, that the findings in the rat cannot be described as negative.

III. Also in connection with the mouse and its significance for man, Shell Chemical Company contends that phenobarbital, an alleged dieldrin-imitating enzyme inducer in the mouse liver, does not cause cancer in man to illustrate, thereby, the inapplicability of mouse liver tumors for man. Specifically, Shell states that "... phenobarbital is a dieldrin-simulator in the mouse; it acts the same way as does dieldrin in increasing the incidence of mouse liver tumors. Phenobarbital does not cause cancer in human beings, even though it produces a tumorigenic response in the mouse liver. This shows that the mouse in this respect is a highly inappropriate test animal with which to make a judgment as to human carcinogenicity."

Dr. J. Clemmensen of the Danish Cancer Registry and the author of a recently published paper entitled "Are anticonvulsants oncogenic?" was presented by Shell Chemical Company in an effort to show that agents, such as phenobarbitone, which can cause certain kinds of enzyme changes and which are carcinogenic in some animal systems, are not carcinogenic in man. This is contended by Shell to provide an example of a substance carcinogenic in the mouse but not in man.<sup>22</sup>

The paper deals with the experience of a group of epileptics who received a regular treatment of sedative drugs, including phenobarbitone. The roster of the epileptics at Philadelphia, a Danish epileptic hospital, was compared with the roster in the Danish National Cancer Registry to see how many of these people had developed any form of cancer in the course of their treatment for epilepsy.

We cannot agree with Dr. Clemmensen that his paper or study establishes that phenobarbitone is not carcinogenic in man. Over 80 percent of the patients at Philadelphia were admitted at an age under 40 years and approximately only 23 percent of the patients survived 20 years of treatment. In fact, 42 percent of the male and 39 percent of the female patients were under 20 years at time of admission. It appears to us that the percentage of patients who reached the cancer-sus-

<sup>22</sup>There is current additional inquiry as to whether anticonvulsants are carcinogenic in man. It should also be stated that Dr. Clemmensen's study could only be considered as pertinent to the dieldrin carcinogenesis problem in a peripheral way and the results thereof could not necessarily be extended to dieldrin.

<sup>20</sup>See also testimony of Dr. Samuel Epstein in the consolidated suspension proceedings (EDF Exhibit No. S 2). As part thereof he stated:

ceptible advanced ages after any reasonable duration of treatment must be small and that these patients are apparently dying of competing causes before cancer develops or are still too young to develop many cancers. Although the study was age adjusted, the participants therein or subjects thereof were too young for meaningful or conclusive analysis. This is also the view of Dr. Marvin A. Schneiderman, Associate Director for Field Studies and Statistics, Division of Cancer Cause and Prevention, National Institute, a well qualified biometrician. He further concludes that "the data here are consistent with the possibility that the anticonvulsants which the epileptics received increased the risk of liver cancer, perhaps two or three-fold. Thus, in the case of phenobarbital, the mouse may indeed b[y] an appropriate model for human carcinogenesis." Dr. Schneiderman lists many other reasons for his similar disagreement with Dr. Clemmensen. In short, we do not believe that the non-carcinogenicity of phenobarbital to man has been established on the basis of Dr. Clemmensen's paper. Shell's argument bottomed thereon must fall.

While the Shell Chemical Company agrees that the Jager study, as supplemented by additional data, of the workers at the Pernis, Holland plant could not be taken as statistical proof that dieldrin is not carcinogenic to man, it contends that the absence of "premonitory" or precancer signs in the workers is positive evidence against the possibility that dieldrin is carcinogenic to man. Shell emphasizes that it is unusual for primary liver cancer to develop in man without premonitory signs such as liver injury, enzyme induction and detectable alpha-feto protein. The Jager study has probative value in the direction advanced by Shell, but it clearly does not establish that dieldrin is not carcinogenic in man or that the mice study results are inappropriate.

While it is expected that dieldrin would manifest itself in the human liver, this is not necessarily so. Consequently, the normal liver function of the Pernis workers does not establish absence of carcinogenic activity. In addition, Dr. Farber, Director of the Fels Research Institute, Temple University School of Medicine, who has expertise with respect to animal and the human liver, testified that cancer of the liver could develop even absent "premonitory" signs or in the face of normal liver function "until perhaps late in the course of the disease." He explained that if the patient had cirrhosis of the liver which is a chronic disease of the liver which frequently accompanies and precedes liver cancer, then functional changes would be manifest, but that cancer can develop in the absence of cirrhosis and such individuals may not have disturbances in the liver function until late in the course of the disease. Also, the presence of alpha-feto protein in the blood serum is not necessarily found in liver cancer patients.

Moreover, the working population at Pernis was screened by medical examinations before employment and had further examinations during the course of employment. Workers with abnormalities of the brain and liver, who might be most susceptible to dieldrin effects, were excluded from the study at the start thereof. Persons who showed signs of insecticide intoxication or who themselves were distressed by personal reactions to the insecticides were shifted away from direct exposure. Shell should be commended for such action. But, it resulted in a selected population of relatively healthy young male industrial workers. In this connection, Dr. Schneiderman concluded that "the Jager study is an interesting followup of some healthy young male workers on whom we have only rudimentary dose information, but who appear to have received relative

small doses of the material, and who have been followed for relatively short periods of time with no overwhelmingly destructive effects yet appearing." While this observation or conclusion was given basically from an epidemiological viewpoint, it also applies to the absence of "premonitory" signs, we believe.<sup>22</sup>

Shell Chemical Company further states that approximately 1,000 workers have been exposed to dieldrin and other pesticides at the Pernis plant and that if dieldrin were a human carcinogen this could very well have been detected in a group of this size. Shell contends that "virtually all known human carcinogens have been observed first in small industrial populations, most with numbers smaller than the worker population at Pernis."

The figure of 1,000 workers is not valid as extended exposure and surveillance did not cover a group any where near that size. But, in reality, Shell is engaging in an argument involving epidemiology, a matter which it allegedly conceded. More importantly, Shell's contentions in this regard are based upon the testimony of Dr. Van Raalte with respect to 18th, 19th and early 20th century discoveries of cancer in small groups of workers and the inferences he drew therefrom. Such testimony and inferences were totally negated we believe by Dr. Schneiderman's distinction between retrospective studies in an epidemiological sense and prospective studies. He stated, in part, "if you are doing a retrospective study, that is you take people with the disease and go back then and try to see what they worked on, you can find very much more in retrospective study than in prospective study. Almost all the ones you have talked about are retrospective study. . . . Now here the Pernis study is a prospective study. It deals with somewhere up to 800 men who were followed through the future. We are not looking at people with liver cancer to see where they worked. We are looking at people who worked to see whether they develop some disease."

Shell Chemical Company goes on to make what we believe are, in part, epidemiological arguments, that is, period of exposure, latency periods, level of exposure, the worker population at issue and their relation to the general population and the significance of the absence of women and children from the worker group. It seems to us that Shell cannot on the one hand state that it does not contend that the Pernis study was epidemiological proof of the negative and rely on the matters listed above as it does. Comparisons with experiences with known human carcinogens in the respects listed above, while of borderline relevancy, does not necessarily tell us anything about dieldrin.<sup>23</sup> Shell concludes, in effect, with the statement that "were dieldrin a human carcinogen, the results at Pernis would have been different." Such is clearly not the case. All that can be said with respect to the

<sup>22</sup>In this connection, Shell strenuously contends in its brief that the malignant tumors suffered by 2 of the Pernis workers cannot be related to the workers' exposure to dieldrin and to the other chemical compounds manufactured there. We do not hereby conclude that there is any such connection. But, we do not believe that Shell can establish that there is not taking into account the variable sensitivity of humans to carcinogens and the fact that the cancer may manifest itself in different organs.

<sup>23</sup>Much was said about vinyl chloride. It is not comparable to dieldrin and the Pernis workers, and we note that its carcinogenicity was discovered in laboratory animal experiments.

Pernis experience at his time is that an excess of cancers has not yet appeared in those workers.

Alleged similarities or dissimilarities between the mouse, man and other species were also advanced by Shell Chemical Company. Dr. Wright, a Shell employee, described the process of degranulation of the rough endoplasmic reticulum and stated that degranulation was elicited by dieldrin within the liver cells of mice, but not of other species. He testified that this process was closely correlated with carcinogenicity and opined that this would prove to be a critical process in carcinogenesis and would soon provide a predictive test.

However, Dr. Farber pointed out 2 known exceptions to the correlation advanced by Wright, which compounds are positive for carcinogenicity in the rat but negative for degranulation in the rat. Also, dieldrin is negative for degranulation in the male LACG strain mouse, but positive for carcinogenicity. Likewise aflatoxin B<sub>1</sub> negative for degranulation in human liver cells is at least strongly suspected of carcinogenicity in man.

An *in vitro* degranulation test as a valid index for carcinogenicity is not established or accepted or anywhere near acceptance in the scientific community and is, in fact, a theory lacking in conclusive proof and already subject to exceptions. Dr. Wright has confined his work up to this point to one or two species and the contentions of his employer in these proceedings on the basis of his work is speculation based on limited knowledge. Even if the correlations advanced by Shell might shed some light on one of the interactions which take place in the carcinogenic process, we would still be far from an explanation of that process in any single species to say nothing of an explanation of how various species compare and contrast among themselves in their reaction to carcinogens. In short, even if degranulation should correlate with cancer incidence, this phenomenon may tell us nothing concerning mechanisms, much less shed light on the differences among species insofar as causative mechanisms are concerned.

Dr. Wright also suggested that the induction of microsome enzymes in the mouse liver was closely associated with carcinogenicity. This is an alleged association based on only 5 compounds and at least one exception thereto is known. Dr. Farber was emphatic in rejecting a precise correlation between enzyme induction and carcinogenicity. But, what we do know of enzyme induction by dieldrin is not reassuring. Dr. Gelboin of the National Cancer Institute, who discussed in detail the liver microsomal enzyme system, compared it to a "double edged sword." Stimulation of microsomal enzymes by foreign chemicals serves an important function in enabling the body to more rapidly detoxify and excrete toxic chemicals. But, it is now known that in certain circumstances, microsomal enzymes activate carcinogens by converting them to their active forms. Enzyme induction in itself thus conveys a warning of possible carcinogenic hazard, not only to animals but also to man. Dieldrin induces liver enzymes in rats as well as mice and there is evidence that it also acts in man. The alleged "no effect" level for enzyme induction by dieldrin in man in the Pernis study has been countered by a later study, using a different assay, which showed elevated enzyme activity associated with relatively modest blood levels of dieldrin.

In addition, Dr. Farber testified that, "It is evident that many chemicals require metabolic conversion to active derivatives before they can initiate the development of cancer. However, the specifics of the metabolic processes which result in cancer in various test

animals are not clear, to say nothing of the metabolic processes in man. No one as yet can draw any valid correlation between a particular pattern of metabolism and the induction of cancer in any species, and any judgments concerning carcinogenicity or lack thereof based on metabolic patterns have no scientific basis at this time.<sup>24</sup> This observation relates to the testimony of Dr. Hutson adduced by Shell with respect, in part, to the rate of metabolism and carcinogenesis. As observed by Dr. Farber, "Suffice it to say that while metabolic activation is essential to carcinogenesis, no correlation between the degree of metabolic activation and carcinogenic risk has been established, by anyone for any compound tested in any species to date."<sup>24</sup>

IV. In the absence of conclusive evidence derived from studies in man for either the safety or the carcinogenicity of aldrin/dieldrin, we are forced to make a judgment as to the potential hazard posed by dieldrin to man on the basis of experiments with animals. The scientific community has accepted the results of laboratory experiments with rodents as an indication whether chemical agents are likely to be carcinogenic in man, as has the Congress as reflected in the Delaney Amendment. Reliance upon animal studies is possible primarily because the pathological processes of tumor development in man are very similar to those of other mammalian species.

Reliance upon animal studies is supported by experience as well as by the pathological similarities of man and animals. Many chemicals which are known or suspected to be carcinogenic in man were first identified as carcinogens in mice. These include coal and tobacco tar extracts, polycyclic and heterocyclic aromatic hydrocarbons, estrogens, and carbon tetrachloride. Furthermore, as stated earlier, all chemicals which are known to cause cancer in man also have been shown to produce cancer in laboratory animals, with the possible exception of trivalent inorganic arsenic which is still under study.

This is not to say that the biological processes of mice and men are identical in every respect. Chemical carcinogens, for example, may affect different target organs in different species. Generally, however, there are sufficient similarities in the metabolic and biologic processes of experimental animals and man to indicate that an agent causing cancer in rodents or other experimental animals poses a high risk of causing cancer in man.<sup>25</sup>

The record is replete with evidence, in fact, overwhelmed with evidence, some of which has been set out above, that such is the case here. We believe that this conclusion represents established traditional and "conventional wisdom." The Shell Chemical Company has strenuously and with sophistication attempted to demonstrate that "this truth" does not apply to aldrin and dieldrin for the reasons we have detailed above. We do not

believe that traditional wisdom or science has been overcome thereby. Shell's presentation with respect to the shortcomings of the mouse as an appropriate test animal and its lack of significance for man is based, in part, on matters far from established in the scientific community, speculation and surmise. In reality, our knowledge with respect to cancer is very limited. Many, many years would be required to pursue the theories, hypotheses and correlations advanced by witnesses for Shell without any confidence that they could be proven.

We find, on the basis of the considerable record herein, as discussed above in part, that aldrin/dieldrin pose a high risk of causing cancer in man. We believe that the respondent, who has the burden of going forward to present an affirmative case for suspension, but not the ultimate burden of persuasion as to safety,<sup>26</sup> has in fact satisfied the burden of proof which is not his that the chemicals in issue pose a high risk of causing cancer in man. It is true that we cannot now point to any individual as having cancer caused by these chemicals, but we may not be able to do so even if aldrin/dieldrin were established human carcinogens due to the many other substances or chemicals in man's environment and the absence of a control population. We cannot wait to do so, however. It would be irresponsible in the extreme to pursue such course or to insist on knowledge of the mechanisms of cancer before any test agent can be regarded as carcinogenic.

The issue of carcinogenicity of aldrin/dieldrin assumes extraordinary significance and immediacy in view of the fact that the entire population of the United States is continually exposed to these chemicals and that dieldrin has probably accumulated in the body tissue of almost every individual. Dieldrin is stored in human fat, circulated in the blood, transferred across the placenta to developing fetuses and secreted in human milk. Dieldrin is a persistent chemical which pervades our diets at significant residue levels. Additionally, man is exposed via the air and other routes. No useful purpose would be served and time does not permit the listing in great detail<sup>27</sup> of the quantities and extent of dieldrin found in humans, in human maternal milk, and in foods or describing in detail the fact that the agricultural uses of aldrin and dieldrin result in much of the dietary exposure of dieldrin to man. It is sufficient to state that dieldrin is found in substantial amounts in humans and in our diets and that a significant source of that dieldrin

<sup>24</sup> See section 164.121(g) of the rules of practice. See also e.g., *Stearns Electric Paste Company v. Environmental Protection Agency*, 461 F. 2d 293 (7th Cir. 1972); *Continental Chemicals Corporation v. Ruckelshaus*, 461 F. 2d 331 (7th Cir. 1972); *Environmental Defense Fund, Inc. v. Ruckelshaus*, 439 F. 2d 584 (D.C. Cir. 1971).

<sup>25</sup> It should be stated briefly that dieldrin is widespread in human food throughout the United States. It occurs most frequently and in greatest quantities in foods of animal origin, that is, dairy products, meat, fish and poultry. Dairy products are probably responsible for the greatest contribution of the average dietary intake but the most highly contaminated single food group is fish. Residues of dieldrin in dairy products are especially high in the Corn Belt and neighboring states. The FDA Market Basket Survey provides a misleading low estimate of average dietary intake of dieldrin. Persons with high dietary intakes of dairy products and meat, especially children, have higher daily intakes than average, often much higher. Breast-fed infants have the highest daily intakes of all.

is the agricultural uses at issue. In addition, there are no indications of a consistent upward or downward trend in residues in human tissues or food.

Averages are usually cited in connection with the amount of dieldrin found in humans, ingested in our foods, etc. We have often stated that we have special concern with the persons with the highest body burdens of dieldrin or persons who take in the highest amount of dieldrin in their diets, etc. We are also especially concerned with those in the population who are genetically the most susceptible and the very young. It is essential, we believe, that the cancer hazard of dieldrin be viewed with this perspective.

V. Shell Chemical Company makes several arguments based upon the announcement at the hearing that heptachlor and chlordane, which apparently may contain heptachlor, will be available for use on corn in 1975, that is, will not be the subject of suspension proceedings under the act. Shell states that heptachlor and its major metabolite, heptachlor epoxide, increase the incidence of tumors in the mouse to the same extent as dieldrin and that the failure to suspend heptachlor and chlordane indicates that "the Environmental Protection Agency does not contend or believe that a compound presents an 'imminent hazard' on the basis of a tumorigenic response such as that found in dieldrin-treated mice. The Agency requires more than the mouse."

In his Determination and Order of December 7, 1972, in the consolidated aldrin-dieldrin cancellation proceedings, the prior Administrator, in deciding not to suspend such insecticides stated, in part, that "the present evidence, confined to one strain of mouse is tentative evidence of a 'risk,' but not sufficient proof that aldrin/dieldrin is a carcinogen in human beings. If un rebutted, this evidence would be a caution signal as to long-term exposure, but does not amount to a red light requiring immediate elimination of all dieldrin residues in the diet." The situation with respect to heptachlor and heptachlor epoxide is similar to that stated for dieldrin by the Administrator on December 7, 1972. As far as we can determine, there is one mouse experiment which incriminates this chemical.

We are somewhat surprised by Shell's position in this regard. It has constantly required and demanded reproducibility of results and confirmation of findings. Its case is bottomed, in part, on these requirements. There is no established confirmation or reproducibility with respect to heptachlor and we do not find any discrimination or capriciousness by virtue of the failure to suspend. Consequently, also, we cannot agree with or follow Shell's argument that the banning of aldrin/dieldrin will not prevent an imminent hazard due to its replacement only in limited part by heptachlor and chlordane. In short, certainty as to the carcinogenicity of heptachlor has not, by any means, reached the level of certainty as with respect to aldrin/dieldrin.

Shell makes additional arguments in connection with the effects of the failure to suspend heptachlor and chlordane. In the consolidated aldrin/dieldrin cancellation proceedings the respondent did not advance these 2 chemicals as proposed alternatives to aldrin/dieldrin or as alternatives that it would sponsor and defend. This fact had nothing to do with the actual availability of these insecticides as alternatives to aldrin/dieldrin. It was a position taken in that proceeding so that the chlorinated hydrocarbons could not be cancelled in turn on the basis that there was another one to take its place and respondent did not, and in actuality now does not, sponsor such chemicals

<sup>24</sup> At the oral argument herein at the close of the hearing, Shell Chemical Company set forth for the first time a 5 stage scheme for dieldrin induced tumor development in the mouse liver and contended that 4 of those stages were only found in the mouse. Such is not the case.

<sup>25</sup> Dr. Heston, a noted geneticist with much experience, testified as follows in this regard: The human population is so much more genetically diverse than any laboratory animals that if a chemical has been shown to be carcinogenic by a significant induction of any kind of tumors in any laboratory strain of mammal, we can reasonably expect that at least certain human beings would also respond to the chemical by developing some kind of neoplasm.

as substitutes for aldrin and dieldrin. Shell contends that "By Respondent's late reversal of its position with respect to heptachlor and chlordane availability and use as a *de facto* alternative to aldrin in 1975, Shell has been severely prejudiced in presentation of its case" in violation of the notice requirements of 5 U.S.C. 554(b). We find no merit to such argument.<sup>23</sup>

The additional arguments advanced by Shell Chemical Company in connection with the availability of heptachlor and chlordane in 1975 are all bottomed on the premise that "the evidence demonstrates that heptachlor-heptachlor epoxide is as much, or more, a laboratory carcinogen as aldrin-dieldrin." This is not the case at this time. Those arguments must fall.

VI. As stated earlier, our consideration of "imminent hazard" with respect to aldrin and dieldrin must take into account "the economic, social, and environmental costs and benefits" of these pesticides. In other words, even with respect to "imminent hazard" a risk-benefit analysis is required by the statute. Cf. "e.g., *In re Stevens Industries, Inc.*," 2 E.L.R. 30011 (June 2, 1972), affirmed "Environmental Defense Fund, Inc. v. Environmental Protection Agency," 489 F. 2d 1247 (D.C. Cir. 1973); "Environmental Defense Fund, Inc. v. Ruckelshaus," 439 F. 2d 584 (D.C. Cir. 1971).

Prior to analysis of benefits, it must be kept in mind that the risk we are dealing with is that of cancer, a matter of grave concern. "Environmental Defense Fund v. Environmental Protection Agency," 465 F. 2d 528, 538 (D.C. Cir. 1972); "Environmental Defense Fund v. Ruckelshaus, supra." Moreover, we must seriously heed the admonition of the Court in the latter case wherein it is stated that the Delaney Amendment to the Federal Food, Drug, and Cosmetic Act indicates "the magnitude of Congressional concern about the hazards created by carcinogenic chemicals, and places a heavy burden on any administrative officer to explain the basis for his decision to permit the continued use of a chemical known to produce cancer in experimental animals." 439 F. 2d 584, 596, fn. 41 (D.C. Cir. 1971).

On the other hand, we must seriously consider the 1975 corn crop, especially in view of the drought this year which has somewhat diminished expectations, its importance and the possible effect of a ban of the use of aldrin thereon during the time it will take to issue the final decision in the consolidated cancellation proceedings. As seen from the Findings of Fact, aldrin use far exceeds that of dieldrin and the major use of aldrin is on corn.

Corn is the world's principal grain used for cattle, hog and poultry feeding and is an important food grain as well in certain countries. We are extremely conscious of the importance of the 1975 corn crop to protein food production and the economy. World grain stocks are at the lowest level in more than 2 decades. Despite generally larger crops elsewhere, the smaller than expected U.S. corn crop this year due to weather conditions will prevent rebuilding world stocks this year. It will be necessary to await next year's crops before there can be hope of rebuilding such stocks.

<sup>23</sup> As indicated above, there was no reversal of position with respect to heptachlor and chlordane availability.

But, we do not believe that the availability of aldrin or lack thereof will significantly affect the 1975 corn crop. Stated another way, it appears to us from the record that the necessity for aldrin in the production of that crop and the consequence of its unavailability have been exaggerated.

To place our inquiry in proper perspective, it should be noted that aldrin is utilized on only approximately 8-10 percent of the acreage devoted to corn production and that some of its use thereon is actually unnecessary. In other words, aldrin is often applied as "insurance." As with much insurance, the covered risk does not occur and would not have occurred even in the absence of the insurance coverage. This is not to say that in certain situations the need for insecticides is not more apparent than in others. In addition, there is some evidence of record that corn soil insect populations are at low levels.

Dr. John Schnittker, a former Under Secretary of Agriculture of the United States who has much experience and expertise with respect to the economics and marketing of feed grains testified on behalf of respondent in these proceedings. He assumed, for the purpose of his testimony, that the absence of aldrin would result in a 1, 2 or 3 percent diminution in the corn crop and projected the consequences of such reductions.<sup>24</sup>

Dr. Schnittker's testimony indicated that the overall economic effects of the ban of aldrin for use of corn depend to a great degree on the extent of the future demand for grain imports which will be placed on the United States by other countries, as well as on a variety of facts affecting the supply of corn, such as the supply of suitable land, technological developments in corn breeding and husbandry, demand for other agricultural products under soil and climatic conditions to which corn is well adapted, federal farm programs, weather conditions and fertilizer availability. The unpredictability of such factors as weather make projections about future corn harvests in specific years extremely difficult as the recent drought in the corn belt demonstrates. In this connection, however, it appears to us that the reduction of the 1974 corn crop below expectations would, in terms of Dr. Schnittker's analysis, result, in effect, in shifting, in part, his estimates and consequences for 1974 to 1975 since the same basic capability to produce a corn stockpile from next year's crop would remain.

Dr. Schnittker concluded that the current situation prevailing in the grain market is abnormal and short term, resulting from the somewhat unprecedented crop shortfall of world grain in 1972 and 1973 which necessitated a depletion of accumulated reserves. He predicted a general reduction in the import of grain by all countries because "the magnitude of the decline in world grain production in 1972 appears to have been principally the

<sup>24</sup> Such testimony was received in the cancellation proceedings, and his projections were not specifically related to the 1975 crop. Nevertheless, they are valid for these suspension proceedings. In any event, we cannot conceive of a 3, 2 or perhaps even a 1 percent reduction in the 1975 crop by virtue of the absence of aldrin. There is in reality no good basis in the record to predict such a loss probably approximating over 60, 120 and 180 million bushels of corn at the 1, 2 and 3 percent reduction levels, respectively. (See discussion which follows).

result of events which should not be expected to recur regularly." He further stated that "the analysis of agricultural production potential and targets . . . leads to the conclusion that success in expanding production is possible and probable in most countries and that U.S. grain exporting capacity will not be tested every year until the end of the 1970's."

In short, Dr. Schnittker found very little macroeconomic effect of even a 3 percent reduction in corn production, a reduction which he considered to be well beyond any known estimate of the actual impact to be expected from the unavailability of aldrin. We are in full agreement with both of these conclusions. This is not to say that we are not very concerned about possible effects of suspension upon individual farmers, a matter we shall discuss in the next part of these conclusions.

While predictions and projections are hazardous for obvious reasons, it appears that the planting of additional acres to compensate for any reduced yields would nullify any price impact at the national level and even if no additional acres were planted to offset any yield impact the price of corn would increase by only 1.5 to 5.8 percent for the 1 and 3 percent reductions.

But, as indicated by footnote 20, we do not believe that a 3 percent reduction in yield could result from the absence of aldrin in 1975. In fact, we seriously doubt that even a one percent decline would result. We have been casting about in these proceedings for a reliable estimate of the reduction in yield that would be attributable to a suspension or cancellation of the use of aldrin in the production of corn. One of the obvious problems in this connection is an inability to determine what would have been the case if aldrin had not been used. Aldrin is in part utilized by farmers as "insurance" and may not have been actually necessary at least in some very substantial number of instances.

We totally reject the Doane Agricultural Service, Inc. special survey and projections of loss adduced by the Shell Chemical Company. On its face, it is patently exaggerated, employs "double counting compounded," is based on a small sample from which amazing projections are made and elicited the views of aldrin users who would not in reality know with any precision the effects of the absence of aldrin and who, it seems to us, would demonstrate a bias. Such survey, it also seems to us, was biased in its design, responses and presentation of the survey questionnaire and results and displayed other weaknesses such as statistical deficiency. Similarly, the very rough study of Dr. Freund, which was only intended to be a tentative and preliminary work, cannot be relied upon as indicated by the report itself which states that "the assumptions are extensively qualified and for firm conclusions, more data on many aspects of the study are needed."

It appears to us that aside from the matters mentioned above, the only economic study offering some reliance is that of Dr. Herman W. Delvo, Agricultural Economist, National Economic Analysis Division, Economic Research Service, United States Department of Agriculture, entitled "Economic Impact of Discontinuing Aldrin Use in Corn Production," issued June 1974. Dr. Delvo uses data accumulated from the USDA 1971 Farm Production Expenditure Survey to establish the use pattern of aldrin in 1971. He relies on consultations with entomologists in the Corn Belt states to estimate overall losses in the event that aldrin, heptachlor and chlordane

were not available for use.<sup>30</sup> Dr. Delvo estimates that the overall loss in 1971 in corn production would have been 19 million bushels for the Corn Belt states and a total of 21 million bushels for the entire nation where farmers make use of alternatives to aldrin (But, see footnote 30). If farmers did not use alternatives, he estimates the 1971 loss at 51 million bushels for the Corn Belt states and a total of 55 million bushels for the United States. Even adjusting for 1975 increased acreage over 1971 acreage and considering the fact that, perhaps, use of aldrin for rootworm control may have been overstated, the estimated loss in this study where farmers utilize alternatives is much below one percent of estimated production and may reach one percent if alternatives, including heptachlor and chlordane, are not used, a situation which is improbable.<sup>31</sup>

Confirmatory of the general conclusion of Dr. Schnitker, Dr. Delvo found very little in the way of macroeconomic effect resulting from the absence of aldrin as an input in corn production. In fact, he found a 0.8 percent increase in price with use of alternative insecticides and a 2.2 percent increase in price without alternative insecticides with farmers showing a net gain.

On the basis of the foregoing, we cannot find any major economic or social benefit resulting from the use of aldrin on corn in

1975 in the context of overall effect of its unavailability for such use. In other words, we could not meet the burden placed upon us for continued use by the Court in "Environmental Defense Fund v. Ruckelshaus," supra at footnote 41.<sup>32</sup> It would be strange, indeed, to allow the use of aldrin for the 1975 corn crop and thereby continue to jeopardize the health of the American people in order to place a relatively small amount of corn into the world stockpile. Concern expressed for starving people abroad can be met or satisfied by other means it seems to us, if necessary.

VII. We turn now to the impact of the absence of aldrin upon individual corn farmers, also a matter of great concern. It must be remembered in this connection as well that considerable quantities of heptachlor and chlordane will be available in 1975 and those farmers who feel a need for aldrin may avail themselves of these alternatives to some extent.<sup>33</sup>

Initially much was said of the "corn soil insect complex" consisting of some 20 soil insects that attack corn. Upon analysis, however, it appears that there are generally only 3 and possibly 4 insects that can be of economic significance with respect to damage to corn, namely, the corn rootworm, cutworm, wireworm and, perhaps, the white grub. These insects have varying degrees of importance. The other soil insects attacking corn are not usually even treated for with pesticides. Shell Chemical Company did not include them in a proposed or suggested limitation on use offered by it in these proceedings and we shall confine our consideration to those insects specified above.

The corn rootworm is by far the major corn soil insect pest in the Corn Belt and attacks continuous, as distinguished from, first year corn. Two of the 3 varieties or species of the corn rootworm, that is, the Western and Northern corn rootworm, are now resistant to aldrin and are found in much or most of the major corn producing area of the country. There are many organophosphate and carbamate insecticides which effectively control the resistant corn rootworm and also the nonresistant variety. Consequently, we do not consider the corn rootworm in our determination with respect to the need for aldrin as this pesticide is not used in much of the Corn Belt for the control of this insect and to the extent that it is so utilized to control the nonresistant corn rootworm it may readily be replaced by those chemicals employed to control the resistant variety.<sup>34</sup>

The next major soil insect pest of corn is the cutworm and we shall discuss it below. The wireworm and, perhaps, the white grub are also economically significant pests of corn but to a much lesser degree than the rootworm or the cutworm. On the basis of the

record, we are not overly impressed with the importance of the wireworm. Dr. Delvo, in the study referred to above, found a reduction of only 2,556,000 bushels of corn in the United States due to wireworms if alternatives other than heptachlor and chlordane were used. This seems too high and this figure would need be much less if these 2 insecticides are included in the alternatives. Unlike the cutworm, the wireworm appears to be associated with cropping patterns where corn is grown after sod or pasture. It is a problem primarily of first year corn but can be found in second year corn following sod where it was not properly treated the prior year. Respondent proposes various preplant soil incorporated pesticides as alternatives to aldrin for control of the wireworm. Such alternatives are registered for such use<sup>35</sup> and have shown effective results in field tests. Several of these proposed alternatives performed better or more effectively than aldrin in these field tests. In fact, the record demonstrates some question as to the effectiveness or consistency of aldrin in wireworm control. We do believe or agree, however, that there may be questions with respect to the consistency of effectiveness under all conditions of the alternatives, but under the circumstances presented in this proceeding they properly must be considered as viable alternatives.<sup>36</sup>

Additionally, as we have stated, the wireworm is generally only a significant problem to the individual farmer when certain rotations are followed. Since we are only concerned herein with the 1975 corn crop, the farmer, if he anticipates problems in the absence of aldrin and does not care to apply or cannot obtain one of the possible alternatives including heptachlor and chlordane, may to a large extent solve his problem by the rotation he chooses.<sup>37</sup> For example, a farmer may grow soybeans a second year, a crop which is not greatly affected by the wireworm, or may plant sod or pasture in soybeans rather than starting initially in a corn-soybean rotation, although there is probably very little sod or pasture now available. However, the corn-soybean rotation is probably the most insect free and does not present a great wireworm problem in the rotation from soybeans back into corn. We recognize that this may somewhat restrict some relatively few farmers, but, in the context of these proceedings, such restriction is necessary. As much of the corn land is in continuous corn, we do not believe that great numbers of farmers are faced with this choice absent the availability of aldrin in 1975.

The insect which gives us most concern in connection with its effect upon the individual

<sup>30</sup> In the consolidated cancellation proceedings, heptachlor and chlordane, which are admittedly as effective as aldrin, were not proposed as alternatives thereto and our considerations therein were limited to alternatives to aldrin other than these 2 insecticides. It appears, however, that approximately 3,000,000 and 1,000,000 pounds of technical heptachlor and chlordane, respectively, will be available for use on corn in 1975. We cannot ignore such fact in assessing the effect of a suspension of aldrin on the 1975 corn crop. Consequently, Dr. Delvo's estimates must be considerably reduced since he did not include heptachlor or chlordane in arriving at his conclusion. In reality, his estimates of loss if farmers used alternatives must be reduced, perhaps by 20 to 40 percent or more as testimony in these proceedings indicate that farmers would switch to heptachlor and perhaps, chlordane, the efficacy of which is not in question. In addition, such estimate was based on the supposition that the other alternatives would not be as effective as aldrin. This may not be so at least with respect to newer alternatives for use against the wireworm. We make further observation that many and, perhaps most farmers do not apply aldrin as directed for heavy wireworm or cutworm infestations and losses from such infestations might not be so different with aldrin or an alternate treatment. Also, we note that some of the entomologists with whom Dr. Delvo conferred have testified in these proceedings for Shell or for respondent.

<sup>31</sup> We do not at this time know corn plantings for 1975 but we assume that they should approximate 1974 plantings and that production estimates should be similar for both years especially in view of the present price of corn. In this connection, we also believe that most farmers will use alternate chemicals, even if more expensive than aldrin, because of the favorable price picture and the fact that pesticides represent a relatively small part of the cost of production. In any event, we cannot make estimates of, or on the basis of, failure of farmers to use alternatives. Most importantly, we do not necessarily agree by virtue of the above analysis that losses would be as high as stated by Dr. Delvo. We have merely used his paper as a frame of reference. We believe that Dr. Delvo may have overestimated losses due to wireworm and cutworm damage.

<sup>32</sup> Shell Chemical Company in its pretrial brief in the consolidated cancellation proceedings did not, in reality, contend for a macroeconomic effect resulting from the absence of aldrin and several of the entomologists called by Shell as witnesses agreed that its unavailability would not have such an effect in their states.

<sup>33</sup> We do not consider in these suspension proceedings, as distinguished from a cancellation proceeding, such basic questions as biological control without the use of insecticides, possible new resistance of insects to aldrin, possible resurgence of insect populations absent aldrin, etc.

<sup>34</sup> Respondent advances a theory that the substitution of organophosphate and carbamate insecticides for aldrin for control of the nonresistant rootworm may result in increased yields. Such position is too speculative for adoption.

<sup>35</sup> We cannot, it seems to us, consider promising alternatives that are, perhaps, in the "registration pipeline" but are not as yet registered. Mention should be made, however, of section 3(f) (2) of the act (7 U.S.C. 136a(f) (2)) which provides, in part, that "as long as no cancellation proceedings are in effect registration of a pesticide shall be prima facie evidence that the pesticide, its labeling and packaging comply with the registration provisions of the Act." We should state, however, that promising additional alternatives are in the "pipeline" and we surmise that they probably will be registered for the 1975 season.

<sup>36</sup> Alternatives, other than heptachlor and chlordane, are listed in the Findings of Fact. We do not rate their respective merits. The farmer concerned about wireworm damage must consult his state extension entomologist for recommendations with respect to his insect.

<sup>37</sup> Rotation can also solve the problem of the billbug and white grub to a great degree.

farmer is the cutworm. Unlike the wireworm, the cutworm is generally a problem associated with geography, soil and weather. In other words, the cutworm is associated generally with poorly drained river bottom land, heavy soils and low wet spots in upland fields, and rotation does not play a major role in connection therewith except to some extent on first year corn following sod or legumes.

There does not appear to now be an effective preplant or planting time insecticide for the control of the black cutworm, although several insecticides with unknown effectiveness are in the "registration pipeline." Instead, the currently available alternative to aldrin preplant treatment under corn is the application of post emergent sprays and baits, that is, after the insect has actually appeared. Philosophically and as a practical matter, this method of treatment has the advantage of treating for known insect infestation and the avoidance of an "insurance" treatment of entire fields where the insect may not appear, may only attack part of a field or may appear but not in numbers of economic significance.

An entomologist presented by the Shell Chemical Company and others testified that the post emergent baits are as effective as, or better, than, a one pound per acre band or row application of aldrin against the cutworm which is not as effective as a 2 pound per acre broadcast application thereof. The lower rate of application of aldrin is not effective against a heavy black cutworm infestation, but many, if not most, of the farmers apply aldrin at the lower rate. In other words, they are willing to settle for less than the best treatment. This should be a factor, perhaps, in evaluating the sprays and baits as substitutes for aldrin and the actual necessity for any treatment. In any event, the record supports the conclusion that post emergent treatment of black cutworm; the major cutworm pest, with baits is efficacious with post emergent sprays having lesser effectiveness.<sup>3</sup>

However, post emergent treatments for the black cutworm has several difficulties or disadvantages. In order to be effective as alternatives to preventive preplant or planting time applications of aldrin, the baits or sprays must be timely applied. This requires that the farmer observe his fields carefully during an approximate 3 to 4 week period when the corn begins to emerge. This does not mean that all farmers need observe their fields or that those farmers with a suspect cutworm problem need observe all their fields. It does mean that the farmer who has had cutworm problems in the recent past must check key survey spots in his suspect fields. While a 6-state cooperative survey is developing a scouting system, we are not, we believe, at the point of having available commercial scouts or commercial scouting of farmers fields for cutworms. Rather, the individual farmer, his family or employees or even high school students could scout or walk select portions of corn fields in an attempt to detect early signs of cutworm damage. Such damage is more readily recognizable than damage caused by other insects. We recognize that this imposes a burden on the farmer at perhaps his busy time of year.

Concomitant with early detection of cutworm infestation is the necessity for rapid

treatment with baits or sprays. If the farmer observes early cutworm feeding damage he has several days in which to apply a bait or spray insecticide to protect the crop. The baits will then prevent further loss of stand and any cut corn will have an opportunity to regrow. However, under extreme dry or wet conditions, the bait insecticides may lose some of their effectiveness. An entomologist presented by respondent testified that 75 to 80 percent of the Illinois corn farmers have obtained good to excellent black cutworm control with post emergent baits.<sup>4</sup>

As can be seen from the prior discussion, the use of post emergent baits and sprays in lieu of aldrin presents extra effort and some additional uncertainty. We do not want to leave the impression, however, that cutworm loss is irreparable. Should a field or a portion of a field suffer serious cutworm damage, the farmer has the option of replanting corn thereon. In fact, this is usually done. It is recognized that in that event the farmer suffers the costs of replanting and suffers some loss of yield due to the later planting. But, with the current price of corn, the farmer will most likely receive a profitable return from his corn production, which return will, of course, be reduced from what he would have experienced. In fact, a farmer may initially plant corn later on suspect acres and, perhaps, avoid cutworm injury. In this event, he would suffer some loss of yield due to late or later planting. In addition, heavier seeding is also a valid measure the farmer can take.

Farmers generally are not that familiar with the use of post emergent treatments or with scouting. There appears to us adequate time to prepare for such matters prior to planting time in 1975 which shall probably begin around April 15, 1975.

We do not lightly make these findings as we do not desire to cause additional burdens and uncertainty to farmers who have a history of cutworm problems.<sup>5</sup> But, it appears to us that there is a relatively adequate alternative to aldrin in the treatment of the black cutworm and therefore we cannot conclude that during 1975 aldrin use should be continued for this purpose in view of our conclusions as to the risks accompanying aldrin.<sup>6</sup> We do not expect the corn farmer

<sup>3</sup> The sandhill and glassy cutworm cause special concern as they are subterranean feeders and the bait is probably inadequate. These cutworms are not widespread and there is some indication in the record that band treatment of Dursban, Dyfonate, Mocap and Diazinon could be effective as to them.

<sup>4</sup> Another uncertainty presented for the record is the availability of the alternate insecticides in 1975. There need not be a pound for pound displacement especially with respect to post emergent treatment. Heptachlor and chlordane are available, insect populations appear to be at low levels, rootworm insecticides give some control of wireworms and perhaps cutworms and aldrin has been overused in the past. We agree that the situation will be tight. We also believe, however, that this decision will generate some additional alternate pesticides to the extent that is possible. Also, any existing stocks of aldrin, if any, could be utilized and the intermediates contracted for by Shell could possibly be available for additional heptachlor production.

<sup>5</sup> Some of the parties primarily in the cancellation proceedings have taken the view that proposed alternatives need be as efficacious as, and no more costly than, the chemical at issue. We reject such a standard especially when the risk at hand is as ominous as cancer.

who has cutworm problems to like this conclusion. We have, perhaps, imposed some onerous burdens upon him. The act makes this requirement, we believe. If the post emergent alternative is not acceptable to some farmers of bottom land, they have the option, perhaps, of planting other feed crops during that season, including soybeans which is another important feed crop. Should some of this acreage be lost to corn in 1975, the replacement thereof by some other feed crop is merely a trade off we believe.

To summarize, we cannot justify the use of aldrin under corn in 1975 both from a macroeconomic or microeconomic standpoint.

VIII. Aldrin is also utilized for control of the Fuller Rose Beetle in Florida, one of the more minor citrus pests in that State. While sales statistics adduced by the Shell Chemical Company indicate that this insecticide is sold and used on citrus in much of Florida, expert witnesses presented by Florida Citrus Mutual, a major grower organization, testified that the economic significance of the Fuller Rose Beetle is very circumscribed geographically in that State. Of the 877,000 acres of citrus in Florida, the rose beetle is only present in numbers sufficient to commence to reduce yield on between 10,000 and 50,000 acres. The area of significant infestation is essentially the Indian River area of the Southeastern seaboard of Florida, an area characterized by poor internal soil drainage, a high water table, and consequently unusually shallow citrus root systems. Less than 5 percent of the total citrus acreage in Florida has been treated with any soil insecticide for control of any insect and even within the Indian River Fuller Rose Beetle trouble region only 20 percent of the acreage has been so treated.

In a typical Indian River grove, approximately 75 percent of the feeder roots of citrus trees are located within 18 inches of the top of the ridge of soil upon which citrus trees are usually planted in that area. Such trees are distinguishable by particularly restricted root systems with unusually limited supplies of feeder roots. These systems are less able to make do with decreases in root productivity resulting from insect damage which would be insignificant in other regions within the State of Florida.

Aldrin is overused on citrus to some extent in that it is unnecessarily utilized. Substantial reduction in crop yields caused by lack of treatment for the Fuller Rose Beetle is relatively rare when the industry is considered as a whole.

As indicated in the Findings of Fact, cultural practices offer a large potential for disruption of pest problems caused by the rose beetle and alternative insecticidal foliar sprays, most of which are already used in the Florida citrus program, come as often as 4 to 6 times a year, provide good initial kill of the adult weevil. The State of California does not recommend the use of aldrin to control the rose beetle on its very substantial citrus acreage and a large Florida citrus grower organization does not utilize it.

Once again, we need put the issue with respect to the continued use of aldrin or dieldrin on Florida citrus in perspective. We are presented herein in these suspension proceedings with the limited question of its continued use during the time it would take to complete proceedings relating to cancellation of such chemicals. We are talking, it seems to us, of one split application of aldrin or at most one annual application thereof.

It is clear from the record that in view of the limited area of possible need and, in reality, the limited number of orchards or trees involved, the absence of aldrin during the restricted period of consideration would

<sup>6</sup> Most states now recommend the post emergent treatment as an emergency treatment. It should be stated at this point that Wisconsin has banned the use of aldrin on corn and that the Illinois state recommendations do not include aldrin. Instead, the post emergent treatment is recommended.

have little, if any, affect upon the Florida citrus industry or the price for its products. Additionally, we see very little effect upon the relatively small number of possibly affected growers. Cultural practices and foliar sprays are available to them as alternatives to aldrin or dieldrin.<sup>4</sup> Further, we surmise that existing stocks of these products, the use thereof not being barred by the Administrator's August 2, 1974 notice of suspension, may well be present in Florida to some extent. In short, we see no overriding benefit or any great disruption from the nonavailability of aldrin or dieldrin for Florida citrus during the next growing season.<sup>4</sup>

IX. Aldrin and predominantly dieldrin are also used for seed treatment or dressing on many different types of seed. The record is not as complete with respect to the need for these insecticides in the treatment of some seeds as distinguished from others or with respect to seed treatment generally. Certain generalizations can be made however. Farmers will purchase seed after it has been treated commercially, will treat the seed themselves prior to planting, often as part of a slurry or liquid mixture, or will add the chemical directly to the seed in a planter box at the time of planting. Commercial treatment of seed is more practical, tending to provide a more even and effective distribution of relatively small quantities of insecticide, particularly in contrast to individual grower's applications by means of planter boxes.

Dosages vary according to the type of seed treated and the seeding rate per acre. Under normal conditions or circumstances, aldrin/dieldrin is applied to seeds at the rate of one-half ounce to one ounce of the chemical per bushel or per 100 pounds of seed. The cost of seed treatment with these insecticides is relatively small and, in some instances, is not passed on to the farmer.

Dieldrin has an effective life as a seed dressing in soil of approximately 10 to 20 days. In warm or hot weather, seeds will typically germinate in 4 to 5 days, but in cool, damp weather germination may be delayed to a week or 10 days. Most of the seed dressing alternatives advanced by respondent are less persistent than dieldrin and provide less of a margin of protection. Lindane appears to be an effective alternative but for some criticism of a delay in germination of the seed resulting from its use. This apparently occurs if the seed has been treated with lindane sometime, such as 3 weeks, before planting. A simple answer to this criticism is a planter box application of lindane by the farmer at the time of planting. This process, of course, has some of the disadvantages mentioned above.

Here too, however, we find no compelling macroeconomic or microeconomic reason necessitating the use of aldrin or dieldrin seed treatment during the period it will take to complete the consolidated cancellation proceedings. Several viable alternatives are available.

<sup>4</sup> We have some hesitation or reservation with respect to some possible disruption of an integrated pest management control system employed in Florida in the control of other insects by the use of alternative foliar sprays. We are not aware that this would necessarily occur however.

<sup>5</sup> Two other weevils of lesser economic consequence than the rose beetle were mentioned in the record. All we have said with respect to the Fuller Rose Beetle is applicable thereto. In addition the diaprepes abbreviatus eradication program has available to it several alternatives.

X. In the consolidated cancellation proceedings, the United States Department of Agriculture defended the continued use of aldrin and dieldrin for certain uses in addition to those discussed above and it similarly does so here. These include such uses of one or the other of these insecticides as on Puerto Rican pineapples, sugarcane and bananas, onions grown in the Tulare Basin of Northern California, strawberries in Oregon and Washington, the Department's quarantine program, cranberries and nursery use.

The parties, that is, in this connection, USDA, respondent, Environmental Defense Fund, Inc. and the National Audubon Society, are, in effect, attempting to place us in the straitjacket of deciding the ultimate issues presented by the uses involved in the consolidated cancellation proceedings. We refuse to be so restricted. For this reason the briefs filed by these parties do not, in great measure, really address the problem at hand.

We have stated several times in this Decision that we are solely presented with the continued use of aldrin/dieldrin during a relatively limited time frame, the time it will take to complete the cancellation proceedings. We do not intend to consider matters beyond that period in this Decision. In addition, the briefs of these parties with respect to these uses do not deal with the significance of the availability of heptachlor and chlordane in 1975. For the most part, the parties attack the issues as if heptachlor and chlordane do not exist. This is absurd and we have no intention of deciding the questions posed herein as if they do not exist because the "real world" situation cannot be ignored.

Heptachlor and chlordane were not proposed as alternatives by respondent and the Environmental Defense Fund for the reasons explained earlier. But, these chemicals are here and are registered for many of the uses defended by USDA. In reality, USDA does not challenge or question the efficacy of these insecticides for most of their registered uses. In fact, it recommends the use of chlordane in its regulatory and control programs and "dieldrin is reserved for those limited uses involving soil surface treatments . . . where chlordane will not render the required 100 percent control. . . . This reflects Departmental policy requiring that chlordane be substituted for dieldrin wherever possible."<sup>4</sup>

We need not analyze each of the USDA defended uses and the need for aldrin or dieldrin thereon. Heptachlor or chlordane are registered and effective for such crops or uses as pineapples, greenhouse, nurseries and nursery turf, onions, perhaps strawberries, sugarcane and apparently bananas. Additional substitutes are also available for some of these and other uses. Also, there are alternatives in the "registration pipeline" which we surmise will receive priority.

It can also be stated with respect to the uses involved that we see no major food supply problem and certainly no macroeconomic effect from the lack of aldrin or dieldrin. In

<sup>4</sup> Chlordane surface application is admittedly effective for nurserymen where certification is unnecessary. The alleged need for dieldrin surface application in limited circumstances for certification status for a 4 year period can surely be solved by USDA during the limited period involved herein if only by an additional application of chlordane. This circumstance should not arise often during the limited period and we are certain that administrative adaptability and ingenuity will easily solve this temporary problem.

fact, the cranberry industry is currently suffering from a glut or oversupply. Also, we see no substantial microeconomic consequence from the absence of these pesticides during the limited period at issue. Actually, the absence of any insecticides in some instances will not have effect for some years. It must be realized in this connection that aldrin or dieldrin are not used annually with respect to most of these crops and the affected growers represent a small segment of those industries. For example, a minimum of 5 year protection is claimed with respect to cranberries. In short, we believe that the growers involved can manage for one season at most without aldrin or dieldrin but with the alternatives at hand. As to some of these growers, a different crop rotation is available if they are convinced that they cannot do without aldrin or dieldrin and cultural practices are available to negate or minimize the absence thereof. For example, flooding of cranberry bogs can eliminate the insect pest or pests.<sup>4</sup> In addition, to the extent existing stocks of aldrin and dieldrin are available, they may be used.

To summarize, there clearly does not exist any compelling reason to make aldrin or dieldrin available in 1975 for the uses defended by USDA. We are not hereby saying that our conclusions with respect thereto will be the same in the consolidated cancellation proceedings when we assume that heptachlor and, perhaps, chlordane will once again not be considered as alternatives. We can foresee, for example, a possible conclusion calling for continued use of aldrin or dieldrin at least for a limited period of time while alternatives are found. The record demonstrates in most instances inaction or inadequate action in this regard.

In addition to all of the uses of aldrin and dieldrin already discussed in these Conclusions, they are uses for which no evidence has been adduced with respect to the benefits to be derived from, or the need for, continued use of these insecticides. It is patent, therefore, that there exists no basis to judge such benefits and that, in the context of these proceedings, no economic, social or environmental benefit results from the continued use of these pesticides for such purposes.

XI. Shell Chemical Company, in its objections, alleges certain procedural defects or irregularities in the issuance of the Notice of Intention to Suspend by the Administrator August 2, 1974, which set in motion the institution of these consolidated suspension proceedings. First, it contends that such notice reversed 2 previous decisions by a former Administrator that aldrin/dieldrin was not an "imminent hazard" allegedly on the basis of the same evidence before the present Administrator. USDA similarly makes this argument.

In his Determination and Order of December 7, 1972, in the consolidated aldrin/dieldrin cancellation proceedings the prior Administrator, in deciding not to suspend such insecticides stated, in part, that "the present evidence, confined to one strain of mouse is tentative evidence of a 'risk,' but not sufficient proof that aldrin/dieldrin is a carcinogen in human beings. If unrebutted, this evidence would be a caution signal as to long-term exposure, but does not amount to a red light requiring immediate elimination of all dieldrin residue in

<sup>4</sup> There are no registered alternative chemicals for use on cranberries. But, very few, if any, growers should critically need the chemical in 1975. Only 300 acres were treated in Massachusetts in 1972.

the diet." The Administrator in his August 2, 1974, Notice of Intention to Suspend stated that "an intense examination of the relevant evidence over the past year . . . brought to light certain previously unknown facts, which have now been reviewed and scientifically documented for the first time." Such facts, clearly additional to those mentioned by the former Administrator in his order of December 7, 1972 and his order of March 18, 1971, in which he also failed to suspend the 2 insecticides involved, are then briefly set forth in the August 2, 1974 notice of the Administrator. They clearly form a new and additional basis supporting and, perhaps, requiring the notice of intention to suspend. Further, certain factual assumptions or predictions by the former Administrator forming the basis for his decisions not to suspend proved to be untrue. Moreover, the Administrator could also issue such a suspension on the basis of an extensive re-evaluation of existing information "which perhaps brought its full impact to the attention of the experts for the first time." "Bell v. Goddard, supra," at p. 181.

Shell Chemical Company further contends that the Notice of Intention to Suspend "is fatally defective in that, on information and belief, it was based on improper *ex parte* communications with the Office of the Administrator by parties in the cancellation proceeding and/or their representatives or agents and/or Congressmen and Senators and their staffs."<sup>4</sup> These allegations have not been established. In any event, they are bottomed upon Shell's contention that the suspension proceedings are but a phase or part of the cancellation proceedings. Such is not the case. We agreed that the August 2, 1974 notice was based in large part upon evidence adduced in the cancellation hearing. This does not alter our conclusions. It would be nonsensical to suggest that the Administrator could not consider such evidence in making his determination to suspend or that he need hold, in effect, a public hearing on question of whether a suspension proceeding should be instituted which would in turn require a public hearing, which Shell appears to contend herein.

The Administrator, in the issuance of the August 2, 1974 notice, was functioning in an accusatory capacity in instituting or initiating an action with the further responsibility of ultimately determining the merits of the "charges" so presented. While what was formerly known as the Administrative Procedure Act requires the separation of the adjudicatory and prosecutorial functions in an agency (5 U.S.C. 554(d)), it does not prohibit the combination thereof in the determination as to whether a proceeding should be instituted. See e.g., "Federal Trade Commission v. Cindarella Career and Finishing Schools, Inc.," 404 F. 2d 1308, 1315 (D.C. Cir. 1968) and cases cited therein; "Amos Treat & Co. v. Securities and Exchange Commission," 306 F. 2d 260, 266 (D.C. Cir. 1962); "R. A. Holman & Co. v. Securities and Exchange Commission," 366 F. 2d 446, 455 (2d Cir. 1966). It may well be that the Adminis-

trator should not ultimately decide the aldrin/dieldrin consolidated cancellation proceedings if *ex parte* contact was held with those engaged in investigative or prosecuting functions in those proceedings in determining whether a suspension proceeding should be instituted.<sup>4</sup> But, we see no impediment by reason thereof in his acting in his quasi-judicial capacity in these suspension proceedings.

The United States Department of Agriculture sees additional procedural defects. In its brief, it states, in part, that the consolidated cancellation proceedings would have been finally resolved antecedent to any further significant use of aldrin or dieldrin, that the proponents for cancellation and now suspension had one year to present their case while those defending the continued use thereof only had a very short period of time evidencing a lack of due process, and that these proceedings are defective because the hearing herein began on Wednesday, August 14, 1974 instead of Monday, August 12, 1974, requiring apparently a dismissal thereof. We find little merit in any of these contentions.

As the Administrative Law Judge presiding at the consolidated cancellation proceedings, we had serious doubt as to whether the cancellation proceedings could be completed prior to April 15, 1975, the time of the beginning of corn planting, in view of the time provided in the rules of practice for post hearing procedure, the many additional witnesses to be presented by Shell Chemical Company, the rebuttal evidence that would undoubtedly be adduced to say nothing of surrebuttal, and the extensive cross-examination afforded the parties in those proceedings. These feelings or fears were expressed in ruling on Shell's motion in this connection at the hearing herein. Even if completion were possible by then, which is doubtful, some 6 to 10 million pounds of technical aldrin<sup>4</sup> or approximately 30 to 50 million pounds of the formulated product would have had to be disposed of if the Administrator concluded that aldrin registrations should be cancelled.

USDA's contention that the proponents for cancellation and now suspension had a year to present their case is a glaring over statement and distortion. The case of respondent and EDI' on human health took perhaps a little over a month and that was due in great measure to extensive cross-examination conducted by the Shell Chemical Company. The environmental case was not incorporated into the suspension proceedings. In addition, Shell Chemical Company and USDA incorporated by reference much evidence from the cancellation proceedings into the suspension proceedings and did not thereby lose the benefits of their presentation in the cancellation proceedings. It is true that the Shell Chemical Company put on its case with respect to cancer in a shorter period of time than respondent and EDF, but that was due in great part to the fact that while Shell could extensively cross-examine in the cancellation proceedings, the cross-examination by respondent and EDF was greatly restricted by time constraints in the suspension proceedings. It seems to us, as we stated at the hear-

ing, that Shell received some benefit or advantage as the result of those circumstances.

Finally, USDA contends that Shell Chemical Company was entitled by the statute to have the suspension hearing begin on August 12 instead of 14, 1974, when it did begin, and that a dismissal of these proceedings is warranted thereby. We agree that pursuant to the act Shell Chemical Company was entitled, perhaps, to have the hearing begin on the earlier date. As we explained at the prehearing conference herein, the act was drafted on the basis of a single objector to a notice of suspension. As we further stated, we were concerned with the rights of the over 20 additional objectors to the notice of suspension who are located outside of Washington, D.C. and who received notices later than the Shell Chemical Company. We do not believe that a 2 day delay under the circumstances presented, as spelled out in the transcript of the prehearing conference, is in error, prejudicial to Shell Chemical Company or of substance. To begin the hearing on August 12, 1974 could well have been prejudicial to the many other objectors, some of whom did not even have to file objections until August 12, 1974 or later.

XII. The ultimate question is now presented, that is, whether the continued use of aldrin/dieldrin during the time it will take to complete the consolidated cancellation proceedings presents an imminent hazard, that is, "would be likely to result in unreasonable adverse effects on the environment." We are to determine whether an unreasonable risk to man or the environment is likely during the interim period taking into account the economic, social, and environmental costs and benefits of aldrin/dieldrin.<sup>4</sup> Our answer to such query is apparent from all that went before in this Decision. Some of the pronouncements of the Administrator with respect to suspension, in the context of these proceedings, also demand a finding of imminent hazard. In the Reasons Underlying the Registration Decision Concerning Products Containing DDT, 2,4,5-T, Aldrin and Dieldrin, issued March 18, 1971, he stated, in part, with respect to suspension, as follows:<sup>4</sup>

" . . . this Agency will find that an imminent hazard to the public exists when the evidence is sufficient to show that continued registration of an economic poison poses a significant threat of danger to health, or

" Our prior discussion did not consider the economic costs the continued use of aldrin and dieldrin pose to the user thereof and others. In short, what we have reference to is dieldrin residues in food and feed at FDA actionable limits or above tolerance levels. A witness from the Food and Drug Administration described significant seizures by the FDA by reason of dieldrin residue levels in food and feed. Dieldrin use is indeed economically costly to portions of the food industry. See also *United States v. Ewig Bros. Co., Inc.*, No. 73-1008 (7th Cir. August 28, 1974). Some of those residues, including residues found in poultry in the recent catastrophic "Mississippi poultry seizure" incident, apparently resulted from misuse, accident or mistake. Cf. *Sterna Electric Paste Co. v. Environmental Protection Agency*, 461 F.2d 293 (7th Cir. 1972). But, the amount of misuse, etc., may well soon reach or has reached the level of "widespread and commonly recognized practice." See section 6(b) of the act. We need not decide this issue at this time.

<sup>4</sup> See also *Suspension of Registration for Certain Products Containing Sodium Fluoroacetate* (1080), Strychnine and Sodium Cyanide, issued March 9, 1972.

<sup>4</sup> We note in this connection that section 21(b) of the act (7 U.S.C. 136s(b)) provides as follows: (b) In addition to any other authority relating to public hearings and solicitation of views, in connection with the suspension or cancellation of a pesticide registration or any other actions authorized under this Act, the Administrator may, at his discretion, solicit the views of all interested persons, either orally or in writing, and seek such advice from scientists, farmers, farm organizations, and other qualified persons as he deems proper.

" We do not hereby necessarily agree with counsel for Shell Chemical Company that section 164.7 of the rules of practice applies to such alleged *ex parte* communications even in the cancellation proceedings.

" A representative of the Shell Chemical Company stated at the hearing that it intended to produce 6 million pounds of technical aldrin for use on corn in 1975. We have serious doubt as to this view of the end use estimates of aldrin on corn in 1972, 1973 and 1974.

otherwise creates a hazardous situation to the public, that should be corrected immediately to prevent serious injury, and which cannot be permitted to continue during the pendency of administrative proceedings. An "imminent hazard" may be declared at any point in a chain of events which may ultimately result in harm to the public. It is not necessary that the final anticipated injury actually have occurred prior to a determination that an "imminent hazard" exists.

We need not spin any sophisticated, intricate rationale or argument in this connection, as was done by respondent so well in the brief filed herein, with which we basically agree. In short, suspension is to be based upon potential or likely injury and need not be based upon demonstrable injury or certainty of future public harm. Cf. "Environmental Defense Fund v. Environmental Protection Agency," 465 F.2d 528, 540 (D.C. Cir. 1972).

Briefly, we are talking of a cancer hazard to man. We must remember, in this regard, the characteristics of a chemical carcinogen such as aldrin/dieldrin, that is, the scientific inability to determine a safe or threshold level for man, the fact that the chemicals are carcinogenic at the lowest doses tested, that residues of dieldrin in laboratory species which developed cancer from dieldrin approximate those residues in the American population, the irreversibility of the carcinogenic effect once set in motion by the chemical carcinogen and the long latency period during which the disease has actually set in and is developing but is not yet manifest. Given these characteristics, the risk of injury or harm from the use of the pesticides is present during the pendency of the cancellation proceedings even though the effects of such injury may not be manifested for many years to come. This is precisely what the Administrator had in mind in his March 18, 1971 policy statement set forth above, we believe. In short, the continued use of aldrin and dieldrin even during the limited period with which we are concerned presents a significant potential of an unreasonable risk of cancer in the American public.

In this regard, Dr. Saffioti said the following: It is likely that Dieldrin residues will contaminate a large proportion of the food supply of the American people for many years to come because of past usage of this persistent pesticide. I am clearly not advocating that a large proportion of the food supply to the American people be eliminated because of its presently unavoidable contamination with Dieldrin. At the same time, as a scientist, I am unable to conclude that the continuing contamination of the environment and our food supply with Dieldrin will not produce in some of us the development of cancers, as it has indeed been repeatedly shown to do so in other mammals.

We fear that we have exhausted the reader by this time and we know we have exhausted ourselves in issuing this decision within the impossible time constraints imposed by the statute and the rules of practice. We merely further say that the registrations of aldrin and dieldrin properly involved herein should be suspended in order "to prevent an imminent hazard during the time required for cancellation" when "taking into account the economic, social, and environmental costs and benefits of the use of" these pesticides by reason of all that has been already said in this Decision. To hold otherwise is to demand a state of knowledge with respect to cancer which we do not possess.

Nor does the recent decision in "Reserve Mining v. United States," No. 74-1291 (8th Cir. June 4, 1974) alter this conclusion as it is distinguishable from the case at hand.

While there are several grounds of distinction, such as the relative absence of asbestos in the population of Duluth, Minnesota, as compared with the almost universal presence of dieldrin in humans at significant levels, and the possible difference between an "unreasonable risk to man" and "demonstrable health hazard," the major distinction, we believe, which was recognized by the Court in *Reserve Mining*, is the question of burden of proof. In that case, the Court stated that "Plaintiffs have failed to prove that a demonstrable health hazard exists. This failure, we hasten to add, is not reflective of any weakness which it is within their power to cure, but rather, given the current state of medical and scientific knowledge, Plaintiffs' case is based only on medical hypothesis and is simply beyond proof." The Court there was not dealing with a substance intended to be utilized as a poison. Under the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, the Congress, on the contrary, properly placed the continuous burden of proof of safety on the registrant.<sup>4</sup>

Order. The registrations issued under the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, of the pesticides aldrin and dieldrin involved in these consolidated suspension proceedings are hereby suspended.<sup>5</sup>

HERBERT L. PERLMAN,  
Chief Administrative Law Judge.

SEPTEMBER 20, 1974.

[F.I.R.A. Dockets Nos. 145 etc.]

SHELL CHEMICAL COMPANY, ET AL.

OPINION OF THE ADMINISTRATOR, ENVIRONMENTAL PROTECTION AGENCY, ON THE SUSPENSION OF ALDRIN-DIELDRIN

On August 2, 1974, the Environmental Protection Agency (EPA) issued a notice of intent to suspend the registrations and prohibit the production for use of all pesticide products containing Aldrin or Dieldrin, compounds manufactured exclusively by the Shell Chemical Company (Shell). This notice, pursuant to section 6(c) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA),<sup>1</sup> resulted in several weeks of expedited hearings before Chief Administrative Law Judge Herbert L. Perlman, the presiding judge at the on-going Aldrin-Dieldrin cancellation hearing which began in August of

<sup>4</sup> We do not agree that this burden was not continued in the 1972 amendments to the act or is altered in a suspension proceeding, as contended by Shell Chemical Company. Mention should also be made of *United States v. Ewing Bros. Co., Inc.*, No. 73-1008 (7th Cir. August 28, 1974) where the Court found that DDT and dieldrin found in processed fish at levels above FDA actionable limits were "food additives" under the Federal Food, Drug and Cosmetic Act. We are uncertain of the significance of this case to the issue at hand.

<sup>5</sup> In order to avoid any ambiguity we have not made any distinction with respect to registrations of aldrin and dieldrin held by registrants in these proceedings which we believe may have already been suspended by operation of law, that is, resulting from the untimely filing of objections. (See footnote 3.)

<sup>1</sup> The Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), 7 U.S.C. 135 et seq., as amended by Pub. L. 92-516, 86 Stat. 973, October 21, 1972. The regulatory authority under FIFRA was transferred from the Department of Agriculture to EPA by Reorganization Order No. 3, 1970.

1973.<sup>2</sup> On September 23, 1974, he transmitted to me his recommended decision, including findings of fact and conclusions, which is attached to this decision.

#### I. BACKGROUND

A. *Characteristics and Uses of Aldrin-Dieldrin.*<sup>3</sup> Aldrin is the common name of a chemical compound containing not less than 95 percent of 1,8,9,10,11,11-hexachloro-2,3,7,6-endo-2,7,8-exo-tetracyclo [6.2.1.1<sup>3,4</sup>.0<sup>6,7</sup>] dodec-4,9-diene. It has been used as a contact and stomach insecticide on a wide variety of crops in diverse locations and situations since its introduction in the United States in 1948. As a pure compound, it is an odorless, white, crystalline solid; technical compounds can be various shades of brown. It is lipophilic, meaning that it has an affinity for fatty body tissue, and is fat soluble. It degrades or metabolizes into Dieldrin.

Dieldrin, a closely related manufactured product as well as a metabolic degradation product of Aldrin, is the common name for a material containing not less than 85 percent of 1,8,9,10,11,11-hexachloro-4,5-exo-epoxy-2,3,7,6-endo-2,1,7,8-exo-tetracyclo [6.2.1.1<sup>3,4</sup>.0<sup>6,7</sup>] dodec-9-ene. The pure compound is also an odorless, white, crystalline solid with a somewhat heavier molecular weight than Aldrin. It also is persistent, is more stable and toxic than Aldrin, and is lipophilic.

Aldrin and Dieldrin both are acutely toxic to humans. Poisoning may occur by ingestion, inhalation, or skin absorption, and serious symptoms may result from the ingestion of as little as one gram (1/28 of an ounce). Symptoms of acute exposures include renal damage, ataxia, tremors, convulsions followed by central nervous system depression, respiratory failure and death. Chronic exposures may result in damage to the liver and other body organs.

During the earlier years of its use in the United States, Aldrin was almost entirely limited to applications on cotton, but in the mid-1950's it was replaced by Dieldrin. By 1963, cotton constituted less than one percent of total use of Aldrin. As of 1971, soil applications for corn accounted for 80 percent of the total Aldrin usage. Other uses included termite control (14 percent), rice seed treatment (3 percent), citrus oil use (1 percent), and miscellaneous applications (2 percent). Production of Aldrin in the first six months of 1974 was 9.7 million pounds, compared to approximately 8.7 million pounds produced for the same period in 1973.

Dieldrin, because it is more persistent, replaced Aldrin on cotton until the boll weevil became resistant to both these chlorinated insecticides in the late 1950's and early 1960's. Dieldrin also was used on house flies and mosquitoes, until they too became resistant, and on a variety of other insect pests. The use of Dieldrin has declined from a maximum of about 3.6 million pounds in 1956 to approximately 0.6 million pounds today. The most

<sup>2</sup> The transcript of the cancellation hearing already exceeds 24,000 pages, not including many thousands of pages of the witnesses' statements (which are reported separately) and exhibits. The suspension hearing transcript approaches 4,000 pages in length, also not including the lengthy statements by the witnesses and exhibits, which roughly are the same length as the transcripts, plus more than one thousand pages of briefs by the parties.

<sup>3</sup> These two similar compounds have somewhat different uses; but because in the environment or in the body Aldrin quickly degrades to the more stable Dieldrin form, the two terms will generally be used interchangeably in this opinion.

recent accurate figures for Dieldrin indicate that in 1971 approximately 44 percent was used for termites, 20 percent on fruit foliage, 14 percent for seed treatment, 13 percent on vegetables, and 9 percent for miscellaneous uses, including tobacco and sweet potatoes.

Combined Aldrin and Dieldrin consumption, which in 1970 was 10.7 million pounds, rose in 1971 to 12.3 million pounds. The estimate for 1973 is approximately 11 million pounds.

**B. Definition of cancellation and suspension.** As will be discussed more fully later, cancellation is warranted under the FIFRA when there is a "substantial question of safety" concerning a pesticide. During the period of the administrative review process, which often lasts several years, the manufacture and distribution of the product continues unaffected—a fact which may contribute to the protracted nature of many cancellation proceedings.<sup>4</sup>

Suspension is mandated when there is an "imminent hazard" to man or the environment. This may be declared at any stage of the administrative review process, either upon receipt of new evidence or after reevaluation of existing evidence.<sup>5</sup> The suspension order, which resembles a preliminary injunction,<sup>6</sup> immediately halts the production and distribution of the pesticide and remains in effect until the cancellation hearing is completed and a final decision is made by the Administrator of EPA.

**C. History of the case.** For almost four years, EPA has had under consideration the issue of Aldrin-Dieldrin. On December 3, 1970, one day after the Agency formally came into existence, it received a petition from the Environmental Defense Fund (EDF) requesting the cancellation and immediate suspension of all uses of Aldrin-Dieldrin. As a result, on March 18, 1971, the Administrator of EPA issued a notice of cancellation based upon a finding of a "substantial question as to the safety" of Aldrin and Dieldrin.<sup>7</sup> The Administrator also concluded, however, that the evidence then available to him did not demonstrate "an imminent hazard to the public". He, therefore, declined to order a suspension of the compounds pending completion of administrative review.

EDF promptly filed a petition in the United States Court of Appeals for the District of Columbia to review the Administrator's failure to suspend the registrations.

<sup>4</sup> The Administrative Law Judge noted on several occasions during the suspension hearing that the cancellation proceeding on Aldrin-Dieldrin was characterized by a fair amount of footdragging. See, e.g., Transcript 305.

<sup>5</sup> See *Bell v. Goddard*, 366 F. 2d 177, 181 (7th Cir. 1966), where an administrative action was based on reanalysis "which perhaps brought its full impact to the attention of the experts for the first time."

<sup>6</sup> *Environmental Defense Fund v. Environmental Protection Agency*, 456 F. 2d 528, 538 (C.A.D.C. 1972) [hereafter *EDF v. EPA*].

Note that in *Nor-Am Agricultural Products, Inc. v. Hardin* 435 F. 2d 1151 (7th Cir. 1970), cert. denied 402 U.S. 935 (1971), the court held that a suspension order, since it was not a final Agency decision, was not judicially reviewable under FIFRA or the Administrative Procedure Act. The *Nor-Am* decision was criticized in dicta in *Environmental Defense Fund v. Ruckelshaus*, 439 F. 2d 584, 591-592 (C.A.D.C. 1971) [hereafter *EDF v. Ruckelshaus*].

<sup>7</sup> Statement of the Reasons Underlying the Decision on Cancellation and Suspension of DDT, 2,4,5-T, and Aldrin and Dieldrin, March 18, 1971.

The Court's decision, issued on May 5, 1972,<sup>8</sup> remanded the record to EPA for further consideration of the issue of suspension, in light of the judicial interpretation of the power of suspension enunciated in the decision and the March 28, 1972 report of the Aldrin-Dieldrin Scientific Advisory Committee. The Court specifically directed EPA to examine the nature and extent of evidence available on the carcinogenicity of Aldrin-Dieldrin.

Following a review of the scientific evidence requested by the Court, the Administrator reaffirmed the notices of cancellation of nearly all Aldrin-Dieldrin uses on June 26, 1972.<sup>9</sup> The order also solicited public views as to whether any of the cancelled uses also should be suspended, with particular reference to those methods of application and formulation presenting the most obvious risk of widespread, unavoidable dissemination of the compounds.

Five months later, on December 7, 1972, the Administrator announced that the registrants of Aldrin-Dieldrin had agreed voluntarily to eliminate several of the more controversial uses of the product. Furthermore, pursuant to the May 5, 1972 Court of Appeals order, the Administrator announced that he had further examined the issue of suspension and determined that the available evidence still did not justify a finding of imminent hazard.

The cancellation hearing on the risks and benefits of Aldrin-Dieldrin began on August 7, 1973 and was still in progress a year later when, on August 2, 1974, the Agency issued its notice of intention to suspend. On August 7, 1974, a presiding officer, Chief Administrative Law Judge Herbert L. Perlman, was appointed for the suspension hearing, which commenced on August 14, 1974 and was to last no longer than 15 hearing days. The hearing closed on September 12, 1974, the recommended findings and conclusions of Administrative Law Judge Perlman were delivered to me on September 23, 1974, and on September 24, the parties submitted exceptions to Judge Perlman's recommended decision.

**D. Issues and controversies.** The cancellation hearing, which is expected to continue for an indefinite period, has dealt with a broad range of questions concerning Aldrin-Dieldrin's alleged deleterious effects on the environment and on human beings.<sup>10</sup> In contrast, the suspension hearing has been concerned solely with whether Aldrin-Dieldrin

poses a cancer hazard to human beings, and whether it provides countervailing benefits.

During the hearing, counsel for both EPA and Shell characterized the issues as "cancer and corn," although Judge Perlman correctly pointed out that the benefits also included a number of other crop uses.<sup>11</sup> Nevertheless, in the suspension hearing record, statements of the parties indicate that the major controversy, in fact, may be narrower than "cancer and corn." Counsel for Shell declared at the beginning of the hearing: "Your Honor, in our view the issue is really cancer."<sup>12</sup> Even the presiding officer, who properly sought to insure that all relevant issues were addressed, stated explicitly, "I mean there is no fooling around, the major issue is cancer."<sup>13</sup>

**E. Legal background.** The Administrator is authorized by section 6(o) (1) of FIFRA<sup>14</sup> to suspend immediately the registration of a pesticide pending the outcome of final cancellation proceedings if he determines such action is necessary to prevent an imminent hazard.<sup>15</sup>

\* \* \* the function of the suspension decision is to make a preliminary assessment of evidence and probabilities, not an ultimate resolution of difficult issues,<sup>16</sup> and

The suspension order thus operates to afford interim relief during the course of the lengthy administrative proceedings.<sup>17</sup>

In accordance with the proposition that a suspension order is not a final determination on the merits of cancellation, but rather a temporary decision, the Agency has taken the position that it has a continuing responsibility to review suspension decisions. In his order of March 18, 1971,<sup>18</sup> then-Ad-

<sup>11</sup> Counsel for Shell Chemical Company stated, for example, that "corn, that is really all we care about." Transcript, 87. See also Transcript 123, 294.

<sup>12</sup> Transcript 87.

<sup>13</sup> Transcript 92.

<sup>14</sup> 7 U.S.C. 136d(c) 1.

<sup>15</sup> The Department of Agriculture has contended from the beginning of the suspension hearing that there has been an unlawful commingling of "prosecutive, adjudicative, and judicial functions required to be performed under FIFRA." (See Transcript, p. 37.) This is an interesting assertion because prior to 1970 the functions of FIFRA, including suspension, were performed by the Secretary of Agriculture Section 6(o) of FIFRA clearly states that the Administrator shall issue the notice of intent to suspend and, later, make the suspension decision.

Shell also has repeatedly alleged that unlawful *ex parte* consultations gave rise to the 2 August 1974 Notice of Intention to Suspend. I am completely convinced that any and all consultations between me and my staff which led to the decision to initiate the suspension proceeding were entirely proper and in accordance with due process requirements, administrative law and practice, and fundamental notions of fair play in the conduct of Agency adjudicatory proceedings and therefore find the assertions of USDA and Shell to be unfounded.

The function of a suspension order is not to reach a definitive decision on the registration of a pesticide, but to grant temporary, interim relief. The Circuit Court of Appeals for the District of Columbia twice has stated this view:

<sup>16</sup> *EDF v. EPA*, 465 F.2d at 537.

<sup>17</sup> *EDF v. Ruckelshaus*, 435 F.2d at 589.

<sup>18</sup> 18 March 1971 Order: Reasons Underlying the Registration Decisions Including Products Containing DDT, 2,4,5-T, Aldrin and Dieldrin, p. 12.

Administrator William D. Ruckelshaus stated that the Agency would be prepared to reevaluate the question of suspension at any later stage in the administrative proceedings. In its most recent suspension order, in this proceeding, the Agency stated "The Administrative process is a continuing one, and calls for continuing re-examination at significant junctures."<sup>22</sup>

The Administrator, as noted above, may suspend when he finds that an "imminent hazard" would result during the pendency of cancellation proceedings. Section 2(1) of FIFRA<sup>23</sup> defines the term "imminent hazard" as "a situation which exists when the continued use of a pesticide during the time required for cancellation proceedings would be likely to result in unreasonable adverse effects on the environment." "Unreasonable adverse effect on the environment" is defined by section 2(bb) of FIFRA<sup>24</sup> as "any unreasonable risk to man or the environment, taking into account the economic, social, and environmental costs and benefits of the use of any pesticide."

The Circuit Court of Appeals for the District of Columbia has amplified the statutory definition of imminent hazard: "But we must caution against any approach to the term 'imminent hazard,' used in the statute, that restricts it to a concept of crises."<sup>25</sup>

In another case, the Court declared: The [Secretary of Agriculture] has concluded that the most important element of an "imminent hazard to the public" is a serious threat to public health, that a hazard may be imminent even if its impact will not be apparent for many years and that the public protected by the suspension provision includes fish and wildlife. The interpretations all seem consistent with the statutory language and purpose.<sup>26</sup>

In addition, the Administrator, in his order of March 18, 1971 specifying the criteria for determining an "imminent hazard," stated explicitly that suspension was warranted to prevent actions "which cannot be permitted to continue during the pendency of administrative proceedings. Imminent hazard may be declared at any point in the chain of events which may ultimately result in harm to the public."<sup>27</sup>

In a suspension proceeding, unlike a cancellation action, EPA is not required to balance possible benefits against the environmental and health risks of pesticide usage. The Court of Appeals has considered this exercise of administrative discretion by EPA and concluded: "We do not say there is an absolute need for analysis of benefits."<sup>28</sup>

We are not clear that the FIFRA requires separate analysis of benefits at the suspension stage. We are clear that the statute empowers the Administrator to take account of benefits or their absence as affecting imminency of hazard.<sup>29</sup>

The Agency traditionally has considered benefits as well as risks, however, and in my opinion, should continue to do so. The recommended decision of the Administrative

Law Judge contains a lengthy discussion of the crop uses of Aldrin-Dieldrin, with their effects and alternatives. Benefits and alternatives are discussed in Part III of this opinion.<sup>30</sup>

In deciding to suspend because of a substantial risk of cancer in man, the Administrator is obliged to follow expressed Congressional policy of keeping carcinogenic chemicals out of the food supply. One Court has pointed out that although pesticides are not "food additives" under the Delaney Amendment, 21 U.S.C. 348(c)(3)(A), the Amendment does however, indicate the magnitude of Congressional concern about the hazards created by carcinogenic chemicals, and places a heavy burden on any administrative officer to explain the basis for his decision to permit the continued use of a chemical known to produce cancer in experimental animals.<sup>31</sup>

The Seventh Circuit has recently held that pesticide residues in processed foods were "food additives" within the meaning of other sections of the Food, Drug and Cosmetic Act, 21 U.S.C. 321(s).<sup>32</sup> But, since the Delaney Amendment does prohibit the setting of safe levels/tolerances of carcinogenic food additives, and since Aldrin-Dieldrin is present as residue in processed foods, the Administrator has a particular burden to explain a basis for a decision permitting continued use of a chemical known to be a carcinogenic in laboratory animals.

## II. THE ISSUE OF THE CARCINOGENICITY OF ALDRIN-DIELDRIN

**A. General theories of carcinogenicity.** Despite the manpower and resources which have been devoted over several decades to the study of cancer, scientists are still far from agreement on the causes, nature, and even definition of cancer. In such an inquiry, where we are acting on the frontiers of knowledge,<sup>33</sup> we must rely on the best available evidence and interpretations and be prepared to modify our views if future scientific advances show we were in error.

A carcinogenic substance, in our opinion, is one which increases the incidence of benign or malignant tumors in exposed animals, decreases the latency period between exposure and onset of the tumor, or results in unusual tumors.<sup>34</sup>

The once-significant distinction between tumors and cancers, or between tumorigenic and carcinogenic substances, has lost much of its validity with the increasing evidence that many tumors can develop into cancers. Thus, for purposes of carcinogenicity testing, they should be considered synonymous.<sup>35</sup>

<sup>30</sup>It is, nevertheless, clear from the EPA Rules of Practice 40 C.F.R. § 104.121(g), and from the case law, that the burden of proof in establishing the safety of a pesticide product in both cancellation and suspension proceedings remains at all times with the registrant. *EDF v. EPA*, 465 F.2d 528, 532 (D.C. Cir. 1972); *Neodane Company, Inc. v. Environmental Protection Agency*, 470 F.2d 104 (8th Cir. 1972); *Stearns Electric Paste Co. v. Environmental Protection Agency*, 439 F.2d 584, 593, n. 34 (C.A.D.C. 1971). See also Administrator's Order of 18 March 1971.

<sup>31</sup>*EDF v. Ruckelshaus*, 439 F.2d at 536, note 41.

<sup>32</sup>*United States v. Vita Food Products of Illinois, Inc.*, No. 73-1008 (7th Cir. 28 August 1974).

<sup>33</sup>Industrial Union Department, AFL-CIO v. Hodgson, 499 F.2d 467, 474 (C.A.D.C. 1974).

<sup>34</sup>The International Association for Research on Cancer (IARC) defines cancer as the induction or enhancement of a neoplasm. International Association for Research on Cancer Report, p. 9.

<sup>35</sup>IARC Report, p. 10.

Similarly, the distinction between benign and malignant tumors, while important to the individual host animal, is not a reliable indicator of carcinogenicity, for "in the thinking of most experimentalists, the induction of a benign tumor is merely a stage in a subsequent occurrence of a malignancy."<sup>36</sup>

This does not mean that some categorization is not useful to researchers. One recognized authority has set forth five stages of cancer development: (1) No hyperplastic lesions, (2) hyperplasia, (3) hyperplastic nodules, (4) small carcinoma (less than 5 mm), (5) large carcinoma.<sup>37</sup> If, for example, a pathology study found stage-four carcinoma in the exposed animals and the same number of stage-two lesions in the controls, the results would be distorted if the researcher thereby concluded that the suspected carcinogen had no effect. Such differentiation is not critical to this opinion, however, except possibly in the later analysis of certain Aldrin-Dieldrin tests on rats.

We have long known that cancer may be induced by chemicals, radiation, and even variations in the environment, but we are still not certain of the various mechanisms involved. Although four basic models have been proposed,<sup>38</sup> we do not have a unified model explaining the relationship between the dose and the subsequent cancerous response.

These theoretical concepts have a bearing on the Aldrin-Dieldrin issue, particularly as to the question of the existence, or non-existence, of a threshold level of carcinogenic effect. A "no-effect" level theoretically may exist, but it has not been conclusively demonstrated, and—based on the record in this case—we certainly do not know the "no-effect" level for Aldrin-Dieldrin. The lowest dose tested (0.1 ppm) still produced significant tumors in experimental animals.<sup>39</sup> I therefore agree with the finding of the Administrative Law Judge that "it is impossible to establish a 'safe' level of exposure of Aldrin-Dieldrin to man."<sup>40</sup>

<sup>36</sup>World Health Organization Reports of Cancer, EPA Ex. 40B.

<sup>37</sup>Statement of Melvin D. Reuber, M.D., EPA Ex. 42, p. 10.

<sup>38</sup>These models are the following: (1) The "one-hit" theory, derived from extensive research on atomic radiation, which holds that a carcinogenic effect may result from a single fortuitous "hit" on a single cell by some form of energy, such as a chemical. (2) The so-called logit model, derived from chemical kinetics, that there is a slow increase in response as the dose increases until finally the effect levels off when the limited number of chemical bonding sites are occupied. (3) The so-called theory of metabolic overload, which assumes that there is a threshold level in each individual, and only when that is exceeded will cancer develop. (4) The theory that everyone has a different sensitivity to carcinogenic stimuli, and that as a statistical assumption the distribution takes the form of a bell-shaped curve. It may well be that more than one theory is correct, depending on many variables, but that is beyond the scope of this opinion. In any case, these four models produce very similar results within the 2-38 percent range.

<sup>39</sup>Shell Ex. S-3A, Tables 16 & 17.

<sup>40</sup>Recommended Decision and Findings of Fact and Law, Finding No. 25, p. 26.

<sup>22</sup> Order of August 2, 1974, at p. 4, quoting from *EDF v. EPA*, 465 F.2d 528 (1972).

<sup>23</sup> 7 U.S.C. 136(1).

<sup>24</sup> 7 U.S.C. 136(bb).

<sup>25</sup> *EDF v. EPA*, 465 F.2d at 540.

<sup>26</sup> *EDF v. Ruckelshaus*, 439 F.2d at 597.

<sup>27</sup> Order of 18 March 1971, supra, p. 6.

<sup>28</sup> *EDF v. EPA*, 465 F.2d at 540.

<sup>29</sup> *EDF v. EPA*, 465 F.2d at 538. If an analysis of benefits is undertaken, the Courts have directed that "greater weight should be accorded the value of a pesticide for the control of disease, and less weight should be accorded its value for protection of a commercial crop." *EDF v. Ruckelshaus*, 439 F.2d at 594.

Contrary to a wide-spread belief, it is not true that all substances are carcinogenic if introduced in sufficiently large doses. Carcinogenicity is a relatively rare phenomenon exhibited by only a few of the many hundreds of thousands of chemicals.<sup>33</sup> High doses are administered in animal tests, not because the researchers seek to correlate animal response levels to humans, but because with a limited number of animals this methodology is necessary to determine gross effects.<sup>34</sup> Consequently, a substance that will induce cancer in experimental animals at any dose level, no matter how high or low, should be treated with great caution.<sup>35</sup>

**B. The validity of animal tests.** Most of what we know about cancer is derived from tests with experimental animals, usually mice.<sup>36</sup> The response of mice to carcinogens is similar pathologically to that of man; and research laboratories, such as those of the National Cancer Institute and Shell Chemical Company, use mice extensively in their research.<sup>37</sup>

Several witnesses in the hearing, such as Dr. Francis Roe of the Tobacco Research Council in London, contended that mice are not suitable test animals because they may have a high incidence of spontaneous tumors.<sup>38</sup>

Although one of the five strains of mice did have a history of natural tumors, this fact alone is not significant.<sup>39</sup> As Dr. Walter Heston of the National Cancer Institute pointed out:

In testing a substance for carcinogenicity, the aim, therefore, is to ascertain whether it can significantly increase the incidence of any tumor, and the choice of strains for demonstrating this is usually not the most susceptible, nor the most resistant, but one with an intermediate genetic susceptibility.<sup>40</sup>

The fact that heredity, hormones, diet, stress, and a host of other factors can influence tumors is thus irrelevant, since the ex-

periments are designed to compare the effects of one variable—the chemical—on exposed animals otherwise subject to the same conditions.<sup>41</sup>

Some witnesses also suggested that carcinogens can be species-specific—that is, a chemical substance might affect mice but not any other species, including man. This is theoretically possible. But of the thousands of compounds tested, the record indicates that this effect has been suggested for only one of them,<sup>42</sup> and even this single exception has been seriously challenged.<sup>43</sup> I therefore

If carcinogens are not species-specific, it logically follows that the demonstration of carcinogenic effect in more than one species is not absolutely necessary for a finding of carcinogenicity.<sup>44</sup>

Most carcinogens are also not organ-specific. In a survey by Dr. Tomatis of 58 compounds known to produce liver tumors in mice, 40 also induced tumors in a variety of other organs.<sup>45</sup> Furthermore, chemically-induced tumors in one species need not appear in the same organ in another species.<sup>46</sup> Thus, a carcinogen which induces liver tumors in mice might, for example, produce mammary cancers in rats and lung tumors in men.

**C. Carcinogenicity of aldrin-dieldrin in mice.** There is no dispute that Aldrin-Dieldrin significantly increases the incidence of liver tumors in five different strains of mice. There is overwhelming scientific data supporting this fact, and the registrants have now conceded this point: The main result from the initial analysis was that in all studies there was a highly significant dose related increase in the liver tumors.<sup>47</sup>

The IARC has concluded that: Dieldrin was tested by the oral route only in mice and rats. The hepatocarcinogenicity of Dieldrin in the mouse was demonstrated and confirmed in several experiments, and some of the liver tumors were found to metastasize. A dose-response effect has been demonstrated in both sexes with an increased incidence in the females at the lowest dose tested, 0.1 ppm in the diet.<sup>48</sup>

<sup>33</sup> EPA Ex. S-11.

<sup>34</sup> The exception, according to Shell, is Phenobarbitone, which is supposedly carcinogenic in mice, but not in man. Shell Ex. 14, based on Dr. Clemmesen's study of epileptics. Arsenic may have the obverse effect, but the mice tests are still not conclusive. See Perlman, Recommended Decision, p. 41.

<sup>35</sup> Dr. Schneiderman has been quite critical of the Clemmesen study and contends that a mathematical re-analysis of his results is "consistent with the possibility that the anti-convulsants which the epileptics received increased the risk of liver cancer, perhaps two or three fold." EPA Ex. 10, p. 9.

will rely on the conclusion of such organizations as the International Association for Research on Cancer, which have rejected species-specificity as unsubstantiated.<sup>36</sup>

<sup>37</sup> EPA Ex. 40-H. Even if species-specificity does exist, it has not been demonstrated for Aldrin-Dieldrin by the record in this case.

<sup>38</sup> An HEW Advisory Panel has recommended that a finding of carcinogenicity be made when a substance is "judged positive for tumor induction in one or more species \* \* \*." EPA Ex. 40F, p. 468.

<sup>39</sup> EPA Ex. 50-H; see also EPA Ex. 40-B, Annex. 1.

<sup>40</sup> EPA Ex. 40, p. 15. Note, however, that in the recent Polyvinyl Chloride episode, both mice and men developed rare angiosarcoma of the liver.

<sup>41</sup> Shell Ex. S-3A, p. 3.

<sup>42</sup> EPA Ex. S-17, pp. 143-44.

Shell's own test results confirm the above conclusions. In exposed groups, all three strains of mice in the seven tests had a high increase in the incidence of liver tumors. The first two tests (Study 1 and Study 2.1) are the most meaningful because the test populations were much larger than in the other tests and the dose levels ranged low enough so that acutely toxic effects did not interfere with the development of slower tumors. The mice tested were also from inbred, outbred, and hybrid strains.<sup>37</sup>

The test results show that the increase in the incidence of tumors was dose-related,<sup>38</sup> although at doses above 10 ppm this relationship was diminished because of interference by acutely toxic effects. At the lowest dose level tested, 0.1 ppm, there was an increase in benign and malignant tumors.<sup>39</sup> Those that did develop had a greater tendency to spread to other sites in the body and especially to the lungs.<sup>40</sup>

Aldrin-Dieldrin shortened the latency period in the development of tumors in both sexes.<sup>41</sup> In one test measuring the effects of limited exposure, the compound increased the incidence of tumors after exposures as short as two weeks; the effects were even more pronounced after one month of exposure.<sup>42</sup>

The incidence of malignant liver tumors was statistically significant in almost every test Shell performed.<sup>43</sup> This elevated incidence of malignancy is particularly important because these strains of mice were especially resistant to malignant liver tumors. The incidence of malignancy in female controls was almost nil and in males it was quite low.

Exposure to Aldrin-Dieldrin and DDT apparently has synergistic effect on the development of tumors. Mice fed 50 ppm DDT had some increased incidence of tumors. However, when mice received a diet of 5 ppm Aldrin-Dieldrin in addition to 50 ppm DDT, the incidence of tumors increased sharply: Males had 4 times and females 8 times as many malignant tumors as those exposed only to DDT. Dr. Reuber has concluded,

It certainly is clear from these observations that Dieldrin and DDT have additive effects when it comes to carcinogenicity. Further, the evidence indicates that Dieldrin is primarily responsible for this important effect. Using the 50 ppm group as the controls the carcinogenic effect of the combined

<sup>36</sup> Study 1's population was over 1000 with dose levels of .1, 1, and 10 ppm. Study 2.1 had a population of 400 and five dose levels of 1.25, 2.5, 5.0, 10 and 20 ppm. Note that Dr. Nathan Mantel has testified that Shell's method of analysis is an adaption of one he developed, and he criticizes Shell for failing to apply his method correctly. He states that their analysis is insensitive to patterns and consistencies and the effects of competing toxicity at high dose levels. Because of its shortcomings, Dr. Mantel feels Shell's analysis is "almost guaranteed to give non-significance for even the strongest carcinogen". EPA Ex. S-21, pp. 2-3.

<sup>37</sup> Shell Ex. S-3A, Table Data 1, Table Data 2; Transcript 986.

<sup>38</sup> Shell Ex. S-3A, Table Data 1.

<sup>39</sup> Shell Ex. S-3A, Table Data 1, Table Data 3.

<sup>40</sup> EPA Ex. 50, pp. 12, 13; EPA Ex. S-1, p. 9.

<sup>41</sup> EPA Ex. 43-E, Table 5.

feeding of Dieldrin and DDT is very highly significant by statistical analysis.<sup>42</sup>

The World Health Organization has recognized that in exposed mice there is an increased risk that liver tumors will spread to the lungs.<sup>43</sup> Shell's test results have confirmed this, for at least two of their experiments demonstrate a statistically significant increase of lung tumors for both sexes. Some increase in lung tumors was observed in almost all their tests. Dr. Gross has testified that the results of the first study:

"... leave little room for doubt that Dieldrin at either 0.1 ppm or both the 0.1 and 1 ppm levels can elevate the incidence of tumors at sites other than the liver (particularly in the lung) and that this elevation is highly significant in either males or females or in both sexes."<sup>44</sup>

D. *Carcinogenic effects on rats.* Rats have been used less frequently than mice as test populations. The quality of the tests has varied widely, and the results have not been uniform. For those reasons the Administrative Law Judge concluded,

"We are hesitantly unwilling at this time to find that Dieldrin is conclusively a carcinogen in the rat although there are indications that this is so especially when the chemical is tested at the lower dosages... we are certain, nevertheless that the findings in the rat cannot be described as negative. (Emphasis in original)."<sup>45</sup>

This caution is warranted by the serious deficiencies in the available rat tests. However, it is my conclusion, following an intensive re-examination of the statistics and testimony presented in the recent hearing, that there is a strong probability that Aldrin-Dieldrin is a carcinogen in rats as well as mice.<sup>46</sup>

The two series of tests conducted by the Food and Drug Administration (FDA) are useful for determining the effects of Aldrin-Dieldrin on rats. Exposed rats had a markedly increased incidence of liver and other tumors, which was especially noteworthy because the tested strains had a low rate of natural liver tumors.

The rate doubled for rats exposed to Aldrin and increased by one-third for those exposed to Dieldrin. A no-effect level was not observed. The liver to body weight ratio increased, and at high doses there were serious enlargements of the liver. After six months, a dose-related decrease in survival rates was observed. In over 90 percent of the

rats dying at high dose levels, lesions were present.<sup>47</sup>

After reviewing the FDA tissue slides, Dr. Reuber confirmed the increase in tumors. He found that at the low dose levels (1.5-10 ppm) there was a low incidence of liver tumors but an increased incidence of tumors in other organs. At higher doses, there was a higher incidence of liver tumors. This incidence of tumors more than doubled at both low and high dose levels. While no liver tumors were observed in controls, 18% of the rats at high dose levels had liver tumors.<sup>48</sup>

These results are confirmed by Shell's own test results, which show that almost twice as many exposed rats had tumors and the liver to body weight ratio among female rats increased at low doses.<sup>49</sup>

E. *Tests on other species.* Aldrin-Dieldrin has also been tested in species other than the mouse or the rat. Almost all these tests have been on dogs and monkeys and are not very useful, due to their small populations and test durations shorter than the cancer latency period.

There have been three dog experiments. The populations have been small, ranging from 1 to 5 animals per dose level, with a duration not exceeding two years. In spite of these obvious test inadequacies, after two years of exposure dogs had diffuse hyperplasia of the liver which "was such that over a period of several years the dogs could have developed carcinoma of the liver."<sup>50</sup> In commenting on the weaknesses of the dog tests, Dr. Saffioti has stated that an acceptable test:

"... would require a duration of at least ten years to come close to the age at which tumors could begin to be found. For example, benzidine, a potent carcinogen for the urinary bladder in man as well as dogs, took about seven years to produce its first tumor in dogs. The number of animals needed for statistical evaluation of tumor incidences in treated and control groups is dependent on mathematical and not zoological criteria, so that there is no reason to accept experiments on groups of one or two or five dogs any more than there is to accept experiments in one or two or five mice. In conclusion, these dog studies are completely and utterly inadequate as carcinogenesis tests and should be totally discarded in the consideration of the carcinogenic response to Dieldrin."<sup>51</sup>

There has been only one monkey test, which had five monkeys at each of five dose levels, and six controls. The test duration was about six years. During that time there was some evidence of microenzyme induction, but there were no observations made on tumors.<sup>52</sup>

Dr. Saffioti has stated that: However, as in the case of dog studies, the number of animals used and the duration of the test for only approximately one-fourth of the expected lifespan of this species, make this study totally inadequate as a carcinogenesis test.<sup>53</sup>

F. *Extrapolation of animal data to man.* The ultimate issue in this suspension proceeding is whether Aldrin-Dieldrin is carcinogenic in man. Because man's response

the finding that a substance is carcinogenic in experimental animals indicates that it to carcinogens is similar to that of rodents, poses a similar risk to man. Dr. Heston has testified:

Knowing this, and knowing the general biological similarity of mice and other mammalian species, including man, we can reasonably expect that in a population of human beings exposed to Aldrin-Dieldrin, cancer of some kind will occur in some individuals, and these individuals will not have been afflicted in the absence of these compounds... The human population is so much more genetically diverse than any laboratory animals, that if a chemical has been shown to be carcinogenic by a significant induction in any laboratory strain of mammal, we can reasonably expect that at least certain human beings would also respond to the chemical by developing some kind of neoplasm.<sup>54</sup>

The strongest position for the registrant was taken by Dr. Don Stevenson, Director of Shell's Tunstall Laboratory, who testified that evidence of human carcinogenicity is only sufficient when five criteria are met:

1. The exposed animals experience a higher incidence of tumors.
2. Tumors develop in more than one species.
3. The development of these tumors can be proven to be compound-related.
4. The animal has proven to be an adequate model for extrapolating to man.
5. Human data is available proving at least one incidence of cancer that is compound-related.<sup>55</sup>

It is no exaggeration to say that Dr. Stevenson's demands are practically impossible to meet.<sup>56</sup> Our knowledge of cancer mechanisms is still imperfect and it may take many years before we understand the mechanisms with certainty. Furthermore, epidemiological studies are difficult or impossible to conduct on the effects of Aldrin-Dieldrin.

It is the carcinogenic effect of Aldrin-Dieldrin, not the mechanism that concerns us here. The evidence is conclusive that Aldrin-Dieldrin is carcinogenic in mice. It has produced statistically significant compound-related benign and malignant tumors in the livers of five different strains of mice. It also significantly increases the incidence of lung tumors. This evidence of carcinogenicity is supported by additional, although not definitive, evidence that Aldrin-Dieldrin has increased the incidence of tumors in rats. Dr. Upton, a recognized cancer expert, has testified:

In safety testing of carcinogens today we are concerned with one question:

Does exposure to the test agent result in a significant induction of tumors in exposed populations as compared to controls? If so, then the test agent has elicited a carcinogenic response and must therefore be considered potentially hazardous to human health. Whether the agent actually is a *sine qua non* of the observed response or merely enhances a virus or some other factor found in the host animal is irrelevant unless and until we know that similar factors are not also found in man. Until we have such knowledge, we have no basis on which to make distinctions between "carcinogens"

<sup>42</sup> See Shell Ex. 3-A Tables 16 and 17. For example, the Shell Study 2.2 shows a significant increase with 1.32% of the controls and 20.66% of the exposed mice developing malignant tumors. This has a very low chance probability of .000000048. Almost three times as many of the treated mice had benign or malignant tumors as did the controls (EPA Ex. S-1, p. 18). However, Shell contends that even though the increase in lung tumors is very high, this increase is incidental to the development of liver tumors and therefore, they reason, it cannot be proven to be caused by Aldrin-Dieldrin.

<sup>43</sup> EPA Ex. 42, p. 26.

<sup>44</sup> Shell Ex. S-4, p. 20.

<sup>45</sup> EPA Ex. S-9, p. 29. Dr. Gross found significant increases in lung tumors, regardless of whether liver tumors were present, and a decrease in the latency period. Over three times as many (77.8%) exposed females developed lung tumors within two weeks as did the control females. (EPA Ex. S-1, p. 9.)

<sup>46</sup> Recommended Decision, pp. 56-57.

<sup>47</sup> This determination that Aldrin-Dieldrin is probably carcinogenic in two species is helpful, but not absolutely essential, to a finding of imminent hazard, as the data on mice is sufficiently strong to justify a finding of carcinogenic risk.

<sup>48</sup> EPA Ex. 33.

<sup>49</sup> EPA Ex. 42. At low doses female rats had an especially high incidence of liver tumors. At high doses the incidence of liver tumors was not as pronounced as should be expected because the rats died from the toxic effects before tumors could fully develop.

<sup>50</sup> Shell Ex. S-15.

<sup>51</sup> EPA Ex. 42, p. 38.

<sup>52</sup> EPA Ex. 40, p. 33.

<sup>53</sup> Transcript, 1082.

<sup>54</sup> EPA Ex. 40, p. 32.

<sup>55</sup> EPA Ex. S-11, 5 & 7.

<sup>56</sup> Transcript 537-555.

<sup>57</sup> Dr. Stevenson's position on the necessity of proof for two species is particularly interesting, since as Director of Shell's Laboratory, he feels that it is no longer fruitful to do research on rats. Furthermore, in spite of Shell's strong position on the necessity for human data, the Registrant is no longer studying Aldrin or Dieldrin's effects on man.

and "co-carcinogens" and "causative agents" versus "enhancing agents".

Given this lack of knowledge concerning mechanisms, I believe that a carcinogenic reaction in any species of test animal must be considered sufficient to describe the test compound as a carcinogen and so a threat to human health. I consider that a similar reaction in a second mammalian species is a confirmation of the carcinogenicity of the test agent but it is not necessary before a finding of carcinogenicity and threat to human health can be made; and negative results in a second or even third species of test animal do not in my mind establish that the test agent is not a threat for human beings. Given the variation in human susceptibility to carcinogens, I believe it unreasonable to ignore a finding of carcinogenicity in any mammalian test species when considering possible effects on human health.<sup>77</sup>

**G. Body burden and intake.** There is a conclusive evidence that residues of Aldrin-Dieldrin are present in virtually every member of the U.S. population. An EPA Human Monitoring Study has established that in 1971, 99.6 percent of the persons sampled had Aldrin-Dieldrin residues in their adipose tissue.<sup>78</sup> The compound also has been found in the blood samples of 69 percent of the population tested.<sup>79</sup>

In the environment, Aldrin-Dieldrin is most frequently present in food crops, and the consumption of food has been man's principal exposure to the compound. The FDA's Market Basket Surveys have shown that the compound is present most frequently in dairy products, meat, fish, poultry, and fruits. Residues were found in 83 percent-98 percent of these products. These particular commodities contained almost all of the Aldrin-Dieldrin residues found in the Market Basket Surveys. Although the levels of these residues has fluctuated somewhat, there has been no significant decline in their presence in recent years.<sup>80</sup> Another EPA Monitoring Study has found Aldrin-Dieldrin residues in 85 percent of the air samples taken.<sup>81</sup>

There is inconclusive evidence on the relationship between the intake of Aldrin-Dieldrin and body burden levels. However, it appears that the longer the exposure, the higher the tissue level.<sup>82</sup> The concentrations of Aldrin-Dieldrin in the adipose tissues of the general population have been found to be comparable to the levels in mice exposed to 0.1 ppm of the compound.<sup>83</sup> After exposure, species eliminate the compound from their systems at different rates. Rats excrete the compound with a half life 4 to 6 times as fast as mice and 13 to 26 times as fast as humans.<sup>84</sup>

<sup>77</sup> EPA Ex. S-19, pp 4-5.

<sup>78</sup> EPA Ex. 36, Tables I and II, EPA Ex. 5-15. Other years deviated from these results insignificantly. Individual samples varied widely from the mean of .27 ppm, with some as high as 116.55 ppm.

<sup>79</sup> EPA Ex. 36, Table III.

<sup>80</sup> EPA Ex. 38A, Table I and II. The average intake in 1973 was .002 mg/day. (.00003mg/kg/day). The study has been criticized for having too small a sample and for poor analytical methods; its figures are unquestionably low. (EPA Exhibit 30). (Tr. 15281). Although the absolute intake values may not be known precisely, their relative values are evident from the study.

<sup>81</sup> EPA Ex. 37. There is evidence that this figure may be low due to absorption in lungs and clothing.

<sup>82</sup> EPA Ex. 8Q.

<sup>83</sup> Transcript 597-598. Thus it may diminish the relevance of placing the emphasis on the intake rather than the tissue level.

<sup>84</sup> Transcript 599.

We are uncertain as to the precise effect of Aldrin-Dieldrin on fetuses and infants<sup>85</sup> but are concerned because their intake levels can be over six times the so-called Acceptable Daily Intake (ADI) level. Breast-fed babies are particularly susceptible, as virtually all human milk has considerable Aldrin-Dieldrin residue.<sup>86</sup>

**H. Epidemiological studies.** Epidemiological studies on the carcinogenicity of Aldrin-Dieldrin have been inadequate and inconclusive. Although it may be true that all known human carcinogens have only been identified through epidemiological studies, the identification of the carcinogenic effects of Aldrin-Dieldrin through such studies would be difficult because there is no member or segment of the human population that has not been exposed to the compounds.<sup>87</sup>

Shell has agreed that their epidemiological study does not prove that Aldrin-Dieldrin is non-carcinogenic.<sup>88</sup> Their tests detected no effect among the subject population, even though some mortality and morbidity was observed.<sup>89</sup> However no conclusion can be drawn from these results because the test does not meet basic standards of acceptability.<sup>90</sup> The test population was too small, the period of exposure was too short, and the medical observation periods were not long enough to approximate the expected latency period of at least 20 years for Aldrin-Dieldrin.<sup>91</sup>

### III. THE USES, BENEFITS AND ALTERNATIVES FOR ALDRIN-DIELDRIN

**A. Relevance of the benefits issue.** In view of the foregoing health risks, do the benefits

<sup>85</sup> No tests have been performed on infants in any species to determine their level of susceptibility. However, some scientists consider it to be quite high.

<sup>86</sup> Transcript 32. The ADI (.0001 mg/kg/day for Aldrin-Dieldrin) was established in 1966 long before the most meaningful tests were run on mice proving the carcinogenic effects of Aldrin-Dieldrin. Although the ADI is defined as a no-effect level, it is actually a threshold level based on a rat study at 0.5 ppm in which exposed rats experienced liver changes (Transcript 769) (Shell Ex. 4, p. 16).

<sup>87</sup> Many compounds induced tumors of an unusual type, which facilitated the identification of the carcinogens. In other cases, the tumor manifested itself in a distinct population before there was a suspicion of carcinogenicity so it was easy to relate the effect back to the cause. These situations do not apply to Aldrin-Dieldrin. As Dr. Gross testified: Even if Aldrin and Dieldrin were to pose a very significant danger to humans, really an impressive, even a catastrophic one, we would never know this. (Transcript 323)

<sup>88</sup> Shell S-4, p. 31; Transcript 505.

<sup>89</sup> There was one death in the high exposure group of stomach cancer, but this death was considered insignificant. In the same high exposure population, one worker developed a tumor during exposure and another, leukemia. It is Shell's position that the test showed no incidence of enzyme induction, liver injury, or the presence of alpha-beta protein. From this, they seem to imply that this is evidence that Aldrin-Dieldrin is not carcinogenic. However, as Dr. Farber has stated, cancer can develop without these symptoms. (See EPA Ex. S-15). Dr. Van Raalte takes the lowest level of exposure in this test, which is 175 x the ADI, and adopts it as a no-effect level. (Transcript p. 681.)

<sup>90</sup> EPA Ex. S-17, p. 11.

<sup>91</sup> EPA Ex. S-10, p. 6. The average occupational exposure was 6.6 years; the average observation period, 7.4 years; and the average age, 47.4. There were 169 men who were exposed at high dose levels. (Shell Ex. S-4).

of Aldrin-Dieldrin justify its continued use? A related question is whether alternative pest controls exist and will be available for the 1975 growing season. The "availability" of alternatives assumes several factors, including timely registration, effectiveness, adequacy of supply, safety, and economy.

The following integrated discussion pertains only to the possible effects of suspending Aldrin-Dieldrin for the duration of the cancellation proceeding.

Since Aldrin-Dieldrin has been found to be carcinogenic in mice and probably carcinogenic in rats, and to present a high risk of cancer to man, it is arguable that any use of Aldrin-Dieldrin, however significant or beneficial in social or economic terms, cannot be justified, even for the limited period of time until the completion of the cancellation proceedings.

As indicated in part I of this opinion, however, it is appropriate that the possible benefits of Aldrin-Dieldrin, or the absence of such benefits, be considered in this proceeding. Nevertheless, it is apparent that any benefits attributable to Aldrin-Dieldrin must be of a high order to affect the findings on carcinogenicity.<sup>92</sup>

The following sections, therefore, analyze the major points raised in the hearing relating to uses, benefits, and alternatives, to determine whether any of these benefits justify the continuing risk.<sup>93</sup>

**B. The significance of aldrin-dieldrin uses on corn.** During the 1950's and 1960's, Aldrin-Dieldrin became the leading insecticide for the control of several corn pests.<sup>94</sup> From that period of widespread application, Aldrin-Dieldrin use has declined to only about 8% of the nation's total corn production acreage.<sup>95</sup> Changes in corn production over this period gradually have reduced reliance on chemical insecticides to sustain high crop yields. These changes resulted from a variety of factors, including the benefits of new hybrids, the availability of synthetic nitrogen fertilizer, and advanced farm management practices.<sup>96</sup> These changes in cultivation also have helped to reduce corn insect populations. Crop rotation practices and the increase in soybean production in the last decade have eliminated some of the favored insect nesting areas.

	Acre (millions)	Percent of U.S. corn growth with aldrin
1971-----	0.4	12.0
1972-----	7.5	11.0
1973-----	7.4	10.0
1974 (preliminary)----	5.0	7.8

<sup>92</sup> *EDF v. Ruckelshaus*, 439 F.2d 584, 590 at note 41.

<sup>93</sup> This evaluation does not necessarily mean that the final decision in the cancellation proceeding will be the same, for a wider range of topics (including other health effects) and additional evidence on both risks and benefits will be considered in those hearings.

<sup>94</sup> See EPA Brief, pp. 181-183, citing the successes of Aldrin-Dieldrin and Heptachlor in the 1950's (Decker Shell Ex. 12). Sales of Aldrin peaked in 1966 (Shell Ex. 111, p. 38), and for corn use in Illinois in 1967 (EPA Ex. 60, p. 9).

<sup>95</sup> See EPA Brief, p. 207, citing USDA figures (Shell Ex. S-17A) showing Aldrin use declined from 13.4 million acres in 1966 (20.3% of U.S. corn acres planted) to 7.5 million acres in 1971 (10.2%). The Doane survey shows a continuing decline since 1971 as follows: (EPA Ex. S-16, p. 3).

<sup>96</sup> See EPA Brief, p. 183-188, citing testimony by Dr. Petty (EPA Ex. 60, p. 2-3) and Dr. Fairchild (Shell Ex. S-16, p. 12).

The recent hearing strongly indicated that the incidence of significant infestations of the major corn soil insects today is extremely low. For example, Dr. Petty testified that there were no major corn insect problems in Illinois in 1972,<sup>97</sup> and Dr. Turpin stated that wireworm and cutworm populations in Indiana were at a very low level.<sup>98</sup> A research team in Iowa, according to Dr. Owens, found less than ten wireworm incidents in 1972 and 1973, only two significant black cutworm infestations, and no white grub problems.<sup>99</sup> Corn farmers, nevertheless, continue to use large quantities of Aldrin-Dieldrin as prophylactic or "insurance" protection against potential pest damage, even where an actual threat of economic injury is not specifically determined. In other words, the pesticide is used even if there is no indication that it is needed.<sup>100</sup>

Aldrin-Dieldrin may no longer be as effective or as necessary in controlling these corn pests as has been claimed or as has been assumed by its users. These doubts are due to the developing resistance to Aldrin-Dieldrin by some corn pests, the current low incidence of corn insect infestations on both treated and untreated acreage, and the lack of recent data on the pesticide's continuing potency.<sup>101</sup>

C. *Alternatives to aldrin-dieldrin for corn.* The most important corn insect pest is the rootworm. Since 1962, it has been known that rootworms were becoming resistant to Aldrin-Dieldrin,<sup>102</sup> and it is now established that two of the three types of corn rootworms are resistant.<sup>103</sup> In view of the fact that other insecticides are available to control rootworm,<sup>104</sup> and the fact that Shell apparently does not place major importance on the use of Aldrin-Dieldrin for rootworm control,<sup>105</sup> corn rootworm control does not present a convincing need for the use of the compound in 1975.

<sup>97</sup> EPA Ex. 60A, p. 109; Transcript (Cancellation) 11141-44, 1135; EPA Ex. 60, p. 7.

<sup>98</sup> Transcript (Cancellation) 11482, 11492, 11561; Indiana Survey for 1972-72, EPA Ex. 61, pp. 22-26.

<sup>99</sup> EPA Ex. 71; see also the testimony of Dr. Stockdale, Transcript (Cancellation) 22656, 22783, 22974.

<sup>100</sup> See, e.g., testimony of various farmers that Aldrin has been used as insurance against insect attack (Garst, Transcript (Cancellation) 284; Decker, Transcript 162; Kirk, Transcript 22, 550; EPA Ex. 61, pp. 34-35).

<sup>101</sup> See testimony of Dr. Petty, EPA Ex. 61, p. 36; Transcript 11560; EPA Ex. 60, p. 7; Transcript 11398; and Dr. Sechriest, Transcript 11794; EDF Brief III A2, pp. 7-9.

<sup>102</sup> See EPA Brief, pp. 188-193, citing various sources concerning what appears to be a conceded fact in these proceedings. EPA Ex. 68, pp. 3-4; Transcript 11074; EPA Ex. 60, p. 3.

<sup>103</sup> The two resistant species are Western and Northern corn rootworm. See Recommended Decision, p. 83.

<sup>104</sup> Among the registered and recommended alternatives listed by EPA are Furadan, Thimet, Dasanit, Dyfonate, Diazinon and Mocap. Counter has a temporary use permit and is expected to be finally registered for rootworms and wireworms by late 1974. EPA Brief, p. 193.

<sup>105</sup> Shell apparently concedes that Aldrin-Dieldrin is not an efficacious treatment for rootworms. No arguments for its use on rootworms are set forth in Shell's Brief No. V in the cancellation proceeding or in their post-hearing brief in the suspension proceeding. The Chief Administrative Law Judge specifically found corn rootworm control not to be a consideration with respect to the need for Aldrin-Dieldrin. Recommended Decision, p. 83.

The black cutworm generally inhabits low-lying, poorly-drained river bottom land, heavy soils, and the low, wet areas of upland fields. The loss in crop stand and yield from cutworm infestation can, on occasion, be substantial.<sup>106</sup>

Wireworm is the third major corn pest. It appears to be associated with cropping patterns where corn is grown after sod or pasture, and is primarily a problem only in first-year corn. Thus, it is generally not a problem after the first year or where soybeans and corn are rotated.

The record indicates that registered alternatives are available for all these pests, although Shell disputes their effectiveness. For corn rootworms, the alternatives include Diazinon, Mocap, Thimet, Furadan, Dasanit, and others. Most of these, and other chemicals, also are registered as effective for control of wireworms. Alternatives registered for cutworms on corn include Carbaryl, Dylox, and Diazinon, with registration pending also for Furadan.<sup>107</sup>

Minor soil insects, such as white grubs, seed corn beetles, seed corn maggot, grape colaspis, corn billbug, Japanese beetle, Asiatic Garden beetle, corn root aphid, corn field ant, flea beetle larvae, or clover root borer, do not pose any significant economic threat to corn production.<sup>108</sup> Where white grubs do exist, some control can be obtained by organophosphates, such as Malathion, or carbamates used to control rootworms or wireworms.<sup>109</sup>

The record further indicates that these alternative pesticides should be available in sufficient quantities for the 1975 season, especially since a pound-for-pound substitution for Aldrin-Dieldrin is neither necessary nor desirable.<sup>110</sup> Shell's own estimates of available supplies indicate significant increases in production of some alternatives and continued high production levels for most others.<sup>111</sup>

D. *Projections of corn crop reductions.* Corn production in the United States is of considerable importance to the nation's economy. Fortunately, the suspension hearing record indicates that the macroeconomic impact of the proposed suspension order would be almost negligible.

The most reasonable projection<sup>112</sup> was the study conducted by Dr. Delvo of the U.S. Department of Agriculture, who predicted that corn crop reduction could amount to as much as 0.4% of expected production.<sup>113</sup>

<sup>106</sup> Sechriest, EPA Ex. 63G, p. 3.

<sup>107</sup> EPA Brief, Table, pp. 176-177. Heptachlor and Chlordane also are registered and effective for certain applications. The Agency does not consider them safe alternatives, even though the scientific case against them is not yet as complete as that against Aldrin-Dieldrin. (See also p. 39, note 1).

<sup>108</sup> See testimony of Dr. Turpin (EPA Ex. 61, p. 40); Transcript (Cancellation) 11141, 15330-3.

<sup>109</sup> See EPA Ex. 60T, p. 88, showing some control of white grubs with band applications of Dasanit, Dyfonate, Diazinon, Thimet, and Furadan.

<sup>110</sup> Hopefully, one result of this decision will be to reduce unnecessary "insurance" applications of insecticides and to limit their usage to situations where they can prevent significant economic injury.

<sup>111</sup> Production of Furadan, Dyfonate, and Mocap, among others, will be substantially increased next year. Shell Brief, pp. II-8 to II-13; see also EPA Brief, p. 206.

<sup>112</sup> Judge Perlman described the Delvo Study, despite certain problems, as "the only economic study offering some reliance." Recommended Decision, p. 79.

<sup>113</sup> Shell Ex. S-17A.

Even this estimate may be considerably inflated, as EPA witness Dr. Aspellin, pointed out, because it assumes a level of wireworm and cutworm infestation considerably in excess of current field estimates.<sup>114</sup>

A second study was conducted for Shell by Doane Agricultural Service. The farmers' loss estimates were ten times as high as the Delvo prediction, plus another five times due to a claimed shifting of production from corn to another crop.<sup>115</sup> This projection seems somewhat high, considering that Aldrin-Dieldrin is used on less than 8% of the nation's total corn crop. Shell has conceded that "because of certain methodological problems and the questions concerning the ability of farmers to make estimates, Mr. Wilkin's estimate may be too high."<sup>116</sup>

A third study, conducted in 1973 by Dr. Fround, assumed the simultaneous unavailability not only of Aldrin-Dieldrin but also of Chlordane and Heptachlor, and consequently projected losses in the range of 0.7 to 1.6 percent. This "very rough study," which was clearly "tentative and preliminary," cannot constitute a reliable basis for a conclusion on macroeconomic impact.<sup>117</sup>

It is possible that there may be no crop reduction at all due to the lack of Aldrin-Dieldrin. For fields with significant insect damage to the young plants, crop loss can be greatly reduced by immediate replanting and treatment with an alternative pesticide.<sup>118</sup> This is a common practice and may be less expensive overall than extensive prophylactic treatments used by many farmers.

I, therefore, concur in the finding of Judge Perlman who, after reviewing the above studies and projections, concluded: "On the basis of the foregoing, we cannot find any major economic or social benefit resulting from the use of Aldrin on corn in the context of overall effect of its unavailability for such use."<sup>119</sup>

E. *Citrus uses of aldrin-dieldrin.* Although the benefits portion of the suspension hear-

<sup>114</sup> Ibid.

<sup>115</sup> Shell Ex. 165.

<sup>116</sup> Shell Brief, p. II-19. The hearing examiner concluded, "We totally reject the Doane Agriculture Service, Inc., special survey and projections of loss . . . . On its face, it is patently exaggerated, employs 'double counting compounded,' is based on a small sample from which averaging projections are made and elicited the views of Aldrin users who would not in reality know with any precision the effects of the absence of Aldrin and who, it seems to us, would demonstrate a bias." Recommended Decision, p. 79.

<sup>117</sup> Recommended Decision, p. 79. Even though the EPA staff believes that Heptachlor and Chlordane pose a "substantial question of safety" sufficient to initiate the cancellation process, and therefore does not recommend them as alternatives, as a factual matter these compounds will be available for the 1975 growing season. The fact that the Agency has not yet initiated administrative proceedings on Heptachlor and Chlordane is not relevant to the hazards of Aldrin-Dieldrin. It would be extremely irresponsible to refrain from banning the use of one carcinogenic compound because another compound might also have carcinogenic effects.

<sup>118</sup> Shell Brief, p. 10.

<sup>119</sup> Recommended Decision, p. 81. Regardless of minimal economic impact at the national level, it is always possible that some individual farmers may be more disadvantaged than others by the suspension of a particular pesticide. It is my interpretation of the FIFRA, however, that these burdens on individual farmers must be severe and widespread to justify exposing the entire population to a demonstrated carcinogen.

ing dealt almost solely with corn, there are a number of "minor" uses for which the Department of Agriculture (USDA) contends that Aldrin-Dieldrin is essential. The most important of these is the use on various citrus pests in Florida.<sup>123</sup>

Aldrin-Dieldrin and other insecticides for control of the Fuller Rose Beetle are only used on 1-5% of citrus acreage in Florida.<sup>124</sup> Even in the Indian River area of Florida, soil insecticides have been applied only to some 20% of the acreage.<sup>125</sup> As with corn, Aldrin-Dieldrin has been used extensively for "insurance" protection on citrus, where actual economic risk has not been specifically determined.<sup>126</sup>

Other Florida citrus pests include the blue-green citrus weevil and the sugar cane root stalk borer weevil (diaprepes), but these are very limited problems, both geographically and in magnitude. Only about 1% of Florida citrus acreage is subject to weevil infestation, and of this Aldrin-Dieldrin is used on somewhat more than one-half.<sup>127</sup>

Although fewer acres of citrus than corn are treated with Aldrin-Dieldrin, the rate of application per acre is considerably higher. Whereas the rate on corn is one to two pounds per acre, the rate on citrus is five pounds. These "minor" uses on Florida citrus, therefore, account for 120,000 pounds of Aldrin-Dieldrin a year.<sup>128</sup>

Alternative foliar sprays and organophosphate soil insecticides, as well as cultural practices, are available to control all of the above minor pests. In California, which does not recommend Aldrin-Dieldrin for control of the Fuller Rose Beetle, effective results have been achieved with Malathion, Sevin, and Carathion, Furadan (in split applications), Guthion, Diazinon, and Lannate are also available alternatives.<sup>129</sup>

It does not appear, therefore, that Aldrin-Dieldrin use on citrus will be a critical need in the 1975 season.

<sup>123</sup> Shell's post-suspension hearing brief only discusses benefits to corn production (Shell Brief, pp. II-1 thru II-25). It must be presumed that, to the extent Shell defends Aldrin-Dieldrin use on citrus (as well as seed treatment and other minor uses), it relies upon grower testimony given in the cancellation proceeding. USDA has taken the lead on the defense of these uses (See USDA post-hearing Brief, in its entirety, which discusses uses on onions in the Tularelake Basin of Northern California, the strawberry industry in Oregon and Washington, pineapple, sugar cane, and banana production in Puerto Rico, and USDA and state quarantine programs). Shell Brief No. V, p. 6.

<sup>124</sup> See Recommended Decision, p. 90; EPA Brief, p. 217.

<sup>125</sup> See Recommended Decision, p. 90.

<sup>126</sup> See Transcript 2324; 2526-27; 2535-36; 2719; 2720-21.

<sup>127</sup> EDF Brief, III-B, p. 31; Florida Citrus Mutual, Ex. 1, p. 1-3.

<sup>128</sup> The figure given in the Orlando, Florida, public hearing by Dr. Robert Bullock of the Agricultural Research Center in Fort Pierce, was that 30,000 pounds of Aldrin-Dieldrin were used. He has since informed me by affidavit, dated 17 September 1974, that this testimony was in error and that the correct figure is approximately 120,000 pounds of technical Aldrin. Letter from James T. Griffiths, Florida Citrus Mutual, 20 September 1974, enclosing Dr. Bullock's affidavit.

<sup>129</sup> EDF has questioned whether Aldrin-Dieldrin remains effective against citrus pests. The most recent test was conducted 16 years ago by Dr. King, who concluded that Aldrin was only effective 70% of the time. EDF Brief, III-B, p. 52.

F. *Seed treatment uses of Aldrin-Dieldrin.* Aldrin-Dieldrin is used in seed dressing for many types of grain, fruit, and vegetable seeds as a prophylactic measure.<sup>130</sup> Normally, only two to four ounces of dressing per 100 pounds of seed is applied, either in commercial seed preparations or by the farmer during planting.<sup>131</sup> This amounts, however, to 130,000 pounds of persistent Aldrin-Dieldrin entering the environment per annum.<sup>132</sup> This hazard is unnecessary, for alternative seed dressings are available: Diazinon, Lindane, and BHC (in Canada) are used effectively for this purpose. Proper cultural practices also can reduce the need for seed treatment.

There is, therefore, little or no evidence that Aldrin-Dieldrin seed dressing is needed to prevent significant social or economic injury.

G. *Other minor uses of Aldrin-Dieldrin.* Many other uses of Aldrin-Dieldrin, including Puerto Rican pineapples, sugar cane, and bananas, onions grown in the Tularelake Basin of Northern California, strawberries in Oregon and Washington, the USDA's quarantine program,<sup>133</sup> cranberries, and nursery stock, are defended by the USDA in this suspension proceeding. Registered alternative insecticides are available for these uses during the period required for the completion of the cancellation proceeding.<sup>134</sup> Registration of additional alternative insecticides is pending.

With respect to these other uses, there is no basis on the record to conclude that significant social or economic injury to the nation or to individual growers would result from the suspension of Aldrin-Dieldrin.

#### IV. CONCLUSIONS

1. Based on the testimony of record in the suspension hearing and the considerations set forth in Part II of this opinion, I have concluded that the continued use of Aldrin-Dieldrin during the time required to reach a final decision in the cancellation proceeding would be likely to result in unreasonable human health risks and, therefore, that an "imminent hazard" within the meaning of section 2(1) of FIFRA would result during the pendency of the cancellation proceeding.

2. I have concluded further, based on the testimony of record and the considerations set forth in Part III of this opinion, that there are no countervailing benefits resulting from the registered uses of Aldrin-Dieldrin that outweigh the human health risks identified, and that, in any event, alternative registered and recommended pesticides do exist and will be available for use in the 1975 growing season to provide effective pest control.

3. It should be emphasized that these conclusions are not dispositive of other risk and benefit issues and considerations pertaining generally to the cancellation proceeding.

<sup>130</sup> See, e.g., Transcript (Cancellation) 3468; 3235; 3263.

<sup>131</sup> See Transcript (Cancellation) 23766-7; 23791.

<sup>132</sup> See Recommended Decision, p. 15.

<sup>133</sup> The use of Aldrin-Dieldrin to assure compliance with USDA and state quarantine programs is an especially troublesome point. The existing federal program requires 100 percent control, which is often assumed if Aldrin-Dieldrin is used. There is a substantial question whether the requirement for 100 percent control is necessary or desirable and whether Aldrin-Dieldrin, in fact, even approximates this level. This requirement should be re-examined in light of the findings in this proceeding.

<sup>134</sup> See EPA brief, List of Alternative Registrations, pp. 176-79.

ing. In particular, it should be noted that the fact that a sufficient need has not been demonstrated for exempting any of the minor uses (i.e., other than corn) from this suspension action should not be interpreted as conclusionary in terms of the cancellation proceeding. Further evidence and further consideration in the cancellation proceeding may show that risks associated with some of these minor uses approach *de minimus* levels and would not outweigh the possible benefits. It also is possible, in the context of the cancellation proceeding, that further evidence and consideration might warrant a different conclusion regarding Aldrin-Dieldrin use on citrus or seed treatment. Such conclusions, however, cannot be reached on the basis of the suspension hearing record.

4. The effect of this decision will be to severely restrict the amount of Aldrin-Dieldrin which will be placed into the environment during the 1975 growing season. It will not completely curtail the addition of these compounds into the environment, since the use of existing stocks will be permitted. I am persuaded that permitting the use of this relatively small amount of Aldrin-Dieldrin will be safer environmentally than attempting to retrieve the products, transport them, and then somehow dispose of the consolidated and remaining supplies. In addition, it would not be appropriate to penalize farmers who have already purchased the compounds with the expectation of using them during the remainder of the current growing season. This decision will, however, substantially eliminate the unnecessary or excessive use of Aldrin-Dieldrin in many areas in the 1975 growing season and it will encourage the use of environmentally safer pest control chemicals, as well as other non-chemical pest control methods.

[FIFRA Dockets No. 146 etc.]

SHELL CHEMICAL CO., ET AL.

ORDER OF THE ADMINISTRATOR

In accordance with the foregoing Opinion, the registrations issued under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, 7 U.S.C. Sec. 135, et seq., for all pesticide products containing Aldrin or Dieldrin which are subject to and for which appeals were duly filed from the Aldrin-Dieldrin cancellation order issued by the Administrator of the Environmental Protection Agency on June 26, 1972, are hereby suspended and the production for use of all such pesticide products is prohibited. Any stocks of technical grade Aldrin or Dieldrin formulated into products after August 2, 1974, may not be placed in commerce, sold, or used for any purposes other than those specifically exempted in the June 26, 1972 cancellation order, as confirmed in the December 7, 1972 order (see Opinion, p. 6, note 1).

All registrations of Aldrin and Dieldrin held by registrants subject to the Aldrin-Dieldrin cancellation order issued on June 26, 1972 which may be now suspended by operation of law for failure to file timely appeals or objections also are hereby deemed suspended.

Notwithstanding the foregoing, for the reasons stated in my notice of Intention to Suspend dated August 2, 1974, and in accordance with the "Special Rule" provisions of section 15(b)(2) of FIFRA, the continued sale and use of existing stocks of registered products containing Aldrin or Dieldrin which were formulated prior to August 2, 1974 shall be permitted.

Dated: October 1, 1974.

RUSSELL E. TRANT.

[FR Doc.74-23964 Filed 10-17-74; 8:45 am]

# FEDERAL MARITIME COMMISSION

## EUROPE PACIFIC COAST RATE AGREEMENT

### Notice of Agreement Filed

Notice is hereby given that the following agreement has been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and obtain a copy of the agreement at the Washington office of the Federal Maritime Commission, 1100 L Street NW., Room 10126, or may inspect the agreement at the Field Offices located at New York, N.Y., New Orleans, La., San Juan, Puerto Rico, and San Francisco, California. Comments on such agreements, including requests for hearing, may be submitted to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, on or before October 29, 1974. Any person desiring a hearing on the proposed agreement shall provide a clear and concise statement of the matters upon which they desire to adduce evidence. An allegation of discrimination or unfairness shall be accompanied by a statement describing the discrimination or unfairness with particularity. If a violation of the Act or detriment to the commerce of the United States is alleged, the statement shall set forth with particularity the acts and circumstances said to constitute such violation or detriment to commerce.

A copy of any such statement should also be forwarded to the party filing the agreement (as indicated hereinafter) and the statement should indicate that this has been done.

### Notice of Agreement Filed by:

Leonard G. James, Esquire  
Graham & James  
310 Sansome Street  
San Francisco, California 94104

Agreement No. 10023-3, among the North Europe—U.S. Pacific Coast Freight Conference (as one party only); Sealand Service, Inc.; Seatrain International, S.A.; United States Lines, Inc. and Vaasa Line Oy, is an application to extend the approval of the basic 48-hour rate agreement for a period of 18 months beyond its scheduled termination date of December 7, 1974.

By Order of the Federal Maritime Commission.

Dated: October 15, 1974.

FRANCIS C. HURNEY,  
Secretary.

[FR Doc. 74-24330 Filed 10-17-74; 8:45 am]

## FEDERAL POWER COMMISSION

[Docket No. CP69-41]

### ALGONQUIN GAS TRANSMISSION CO.

#### Petitions to Amend

OCTOBER 17, 1974.

Take notice that on October 10, 1974, and October 11, 1974, Algonquin Gas

Transmission Company (Algonquin), 1284 Soldiers Field Road, Boston, Massachusetts 02135, filed in Docket No. CP69-41 petitions to amend the order issued pursuant to section 7(c) of the Natural Gas Act in said docket on March 4, 1969 (41 FPC 201), as amended by order accompanying Opinion No. 637 issued on December 7, 1972 (48 FPC 1216), and the order accompanying Opinion No. 637-A issued on February 6, 1973 (49 FPC 345). Algonquin requests, by the instant petitions, authorization to sell natural gas under modifications in its Rate Schedule SNG-1 to provide for a change in deliveries of synthetic natural gas (SNG) which is available from the SNG plant owned by its subsidiary, Algonquin SNG, Inc., at Freetown, Massachusetts, all as more fully set forth in the petitions to amend, which are on file with the Commission and open to public inspection.

The March 4, 1969, order, as amended by the order accompanying Opinion No. 637 authorizes Algonquin, inter alia, to transport and sell natural gas pursuant to Rate Schedule SNG-1 in an aggregate volume not to exceed 120,000 Mcf per day, multiplied by 151, to be delivered over the 182-day period from October 16 to the succeeding April 15.

By the petition to amend of October 10, 1974, Algonquin requests authorization to change its delivery schedule so that most, if not all, of the gas delivered pursuant to Rate Schedule SNG-1 will be delivered during the 151-day period from November 1 through the following March 31. Current delivery schedules to each customer are as follows:

#### Percentage of SNG Contract Demand

Time Period:	
October 16 to November 15-----	50
November 16 to March 15-----	100
March 16 to April 15-----	50

Algonquin proposes to change the delivery schedule to provide that deliveries will be made at the full SNG daily contract demand to each customer from November 1 to March 31 subject to the following conditions:

(1) Algonquin shall have the right to tender each day to each customer up to 50 percent of daily contract demand during the period October 16 through October 31, which volumes shall reduce by an equivalent volume the SNG to be tendered during the November 1 to March 31 period;

(2) Should Algonquin be unable to tender to each customer total SNG contract demand by March 31, Algonquin shall have the right to tender not more than 50 percent of each customer's daily SNG contract demand multiplied by 151 which Algonquin was unable to produce and tender before April 1, of the year.

Algonquin states that its customers have notified it that their efforts to develop alternate supplementary gas supplies during the past several years, in order to cope with the impact of the natural gas shortage on their systems, have caused a considerable change in their gas supply patterns, which led to their suggestion that it would be much more desirable to have SNG available in

larger daily quantities over a shorter period of time. Algonquin proposes no change in total seasonal volumes delivered to its customers.

By the petition submitted October 11, 1974, Algonquin requests the Commission to amend the March 4, 1969, order, as amended, to provide for a sale of SNG, pursuant to its Rate Schedule SNG-1, to Texas Eastern Transmission Corporation (TETCO). Algonquin proposes to make a sale to TETCO of all of the SNG supply which has not been contracted by Algonquin's regular resale customers for the current heating season, which will amount to approximately 12,500,000,000 Btu per day at a price of \$4.00 per Mcf through November 30, 1974, and \$3.96 per Mcf until April 15, 1975, when Algonquin proposes to end said sale.

Algonquin states that it expects that for the 1975-1976 heating season all of its SNG-1 rate schedule gas supply will be required by its regular customers, but that delivery to TETCO for this heating season will alleviate this winter's curtailments on TETCO's system. In the October 11, 1974, petition Algonquin states that TETCO has advised that in its filings with the Commission to implement delivery of gas involved herein TETCO will require as a condition precedent to such delivery that it be authorized to pass on to its customers this winter, through its purchased gas adjustment clause (PGAC), the cost of gas from Algonquin. Accordingly, Algonquin proposes to pass on to its customers through its own PGAC any surcharges based on PGAC authorization granted to TETCO. Algonquin, in the alternative, requests the Commission either to find that the primary authorization granted to TETCO is sufficient authorization to Algonquin and TETCO's other customers to afford PGAC treatment to increased costs passed on by TETCO through its PGAC or to provide for secondary PGAC authorization to Algonquin and other similarly affected pipelines when TETCO is accorded primary PGAC authorization.

Algonquin asserts that if PGAC authorization is necessary before Algonquin can pass any TETCO surcharge to its customers, then such authorization is a condition precedent to Algonquin's acceptance of any certificate authorization issued herein.

TETCO, pursuant to § 154.38 of the regulations under the Natural Gas Act (18 CFR 154.38) has requested by telegram received by the Commission on October 15, 1974, that the Commission grant authorization for TETCO to track, pursuant to its PGAC, the cost adjustment resulting from the purchase of SNG from Algonquin proposed herein.

It appears appropriate in these cases to provide a period less than 15 days for the filing of petitions to intervene or protests. Therefore, any person desiring to be heard or to make any protest with reference to said petitions to amend should on or before October 29, 1974, file with the Federal Power Commission, Washington, D.C. 20426, petitions to

intervene or protests in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

KENNETH F. PLUMB,  
Secretary.

[FR Doc.74-24508 Filed 10-17-74; 8:45 am]

[Docket No. CP73-332]

# **NORTHWEST PIPELINE CORP.**

## **Notice of Petitions To Amend**

OCTOBER 10, 1974.

Take notice that on October 4, 1974, Northwest Pipeline Corporation (Petitioner), P.O. Box 1526, Salt Lake City, Utah 84110, filed in Docket No. CP73-332 two petitions to amend the order issued pursuant to Section 3 of the Natural Gas Act in the subject docket on September 21, 1973 (50 FPC 825), as amended December 28, 1973 (50 FPC —), which order authorized the continued importation by Petitioner of natural gas from Canada at the Kingsgate, British Columbia, and Sumas, Washington, import points, so as to enable Petitioner to continue said importation at a price of \$1.00 per Mcf, consistent with the recent directive of the Canadian government, all as more fully set forth in the petitions to amend, which are on file with the Commission and open to public inspection.

Petitioner requests authorization to continue to import gas purchased from Westcoast Transmission Company Limited (Westcoast) at Sumas and Kingsgate<sup>1</sup> at such price as may be established by the National Energy Board of Canada (NEB) pursuant to the policy expressed by the Canadian government by the directive concerning prices for Canadian natural gas exports, issued on September 20, 1974, by the Honorable Donald S. Macdonald, Ministry of Energy, Mines, and Resources for the Dominion of Canada. Said directive instructs the NEB to establish a border export price of not less than nor greater than \$1.00 per Mcf for all Canadian gas, to be effective for the subject gas sales on November 1, 1974.<sup>2</sup>

Petitioner states it must pay Westcoast the export border price as ordered by the NEB in order for Westcoast to comply with its export licenses or suffer the loss of these supplies, which Petitioner expects to comprise approximately two-thirds of its annual gas supply during the

twelve-month period ending August 31, 1975. Applicant estimates an increase in the commodity element of its currently effective rates of 31.04 cents per Mcf, which equals 2.964 cents per therm, as the result of the increase in the price of imported gas.

Any person desiring to be heard or to make any protest with reference to said petitions to amend should on or before October 24, 1974, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

KENNETH F. PLUMB,  
Secretary.

[FR Doc.74-24368 Filed 10-17-74; 8:45 am]

[Docket No. RP72-64]

# **TEXAS GAS TRANSMISSION CORP.**

## **Petition to Amend Order Approving Interim Settlement Agreement**

OCTOBER 17, 1974.

Take notice that on October 4, 1974, Texas Gas Transmission Corporation (Texas Gas) filed a petition to amend the Commission's order issued March 29, 1974, approving, subject to condition, the interim settlement agreement relating to curtailment procedures between Texas Gas and its customers. The aforementioned third stipulation and interim agreement, among other things, established customer seasonal volumetric limitations (quantity entitlements) for a three-year period.

Texas Gas avers that in accordance with its announced policy, seven customers have requested a modification of their seasonal quantity entitlements set forth in Appendix A of the interim agreement. The changes proposed in the quantity entitlements involve shifts from summer to winter or winter to summer, but total annual quantity entitlements will remain unchanged. Texas Gas is advised that the volumes of natural gas which these customers seek to interchange between seasons are within the same priority-of-service category, and that such changes would permit these customers to render more reliable service. Texas Gas claims to have the capacity available to accommodate the proposed changes in entitlements.

Texas Gas asserts that the quantity entitlements for the City of Ripley, Tennessee set forth in Appendix A of the settlement agreement are understated by 50,000 Mcf per year because of an error in measurement by Texas Gas. To avoid penalizing the City of Ripley for the measurement error, Texas Gas now wishes to increase the City's summer

season entitlement from 200,000 Mcf to 220,000 Mcf and its winter season entitlement from 447,000 Mcf to 477,000 Mcf. The proposed increase would be spread over all priorities reported. According to Texas Gas, a correction of the City of Ripley's Quantity Entitlements would not adversely affect its other customers because this gas was actually being delivered, though not measured.

It appears reasonable and consistent with the public interest in this proceeding to prescribe a period shorter than 15 days for the filing of protests and petitions to intervene. Therefore, any person desiring to be heard or to protest said application, should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10) on or before October 24, 1974. The notices and petitions for intervention previously filed in this proceeding will not operate to make those parties interveners or protestants with respect to the instant filing. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene in accordance with the Commission's rules. This filing which was made with the Commission is available for public inspection.

KENNETH F. PLUMB,  
Secretary.

[FR Doc.74-24509 Filed 10-17-74; 10:45 am]

# **FEDERAL RESERVE SYSTEM**

## **OREGON CORP.**

### **Order Approving Formation of Bank Holding Company**

Oregon Corporation, Oregon, Illinois, has applied for the Board's approval under section 3(a) (1) of the Bank Holding Company Act (12 U.S.C. 1842(a) (1)) of formation of a bank holding company through acquisition of 95.3 percent of the voting shares of The Ogle County National Bank of Oregon, Oregon, Illinois ("Bank").

Notice of receipt of the application, affording opportunity for interested persons to submit comments and views, has been given in accordance with section 3(b) of the Act. The time for filing comments and views has expired, and the Board has considered the application and all comments received in light of the factors set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Applicant was recently organized for the purpose of becoming a bank holding company through the acquisition of Bank, Bank, with total deposits of \$12.8 million, is the 563rd largest bank in Illinois with 0.02 percent of deposits in the State.<sup>1</sup> Bank is the third largest of eight banks competing in the area of Dixon,

<sup>1</sup> All banking data are as of December 31, 1973.

<sup>1</sup> Petitioner is authorized to purchase from Westcoast up to 800,000 Mcf at 14.9 psia per day at Sumas and 151,731 Mcf at 14.73 psia on a peak day and 51 million Mcf at 14.73 psia annually at Kingsgate.

<sup>2</sup> For all other exports the effective date will be January 1, 1975.

Illinois, with about 11.5 percent of total commercial bank deposits therein. Since Applicant has no present operations or subsidiaries, consummation of the proposal would not eliminate existing or potential competition nor have an adverse effect on other area banks.

Among the principals of Applicant are several who are principals of four other banks all of which are located in the Rockford SMSA. The aggregate deposits of these banks represent 17.6 percent of the total commercial deposits in the Rockford SMSA. On the basis of the record, including the facts that the banks are located in a separate but adjacent banking market and are under common ownership, no meaningful competition exists between them and Bank, and it appears unlikely that such competition would develop in the future. Accordingly, the Board concludes that competitive considerations are consistent with approval of the application.

The financial condition and managerial resources of Applicant and Bank are considered to be generally satisfactory and the prospects of each appear favorable. Banking factors are consistent with approval of the application. Although there will be no immediate change or increase in the services offered by Bank upon consummation of the proposal, considerations relating to the convenience and needs of the communities to be served are consistent with approval of the application. It is the Board's judgment that consummation of the proposed transaction would be in the public interest and that the application should be approved.

On the basis of the record,<sup>2</sup> the application is approved for the reasons summarized above. The transaction shall not be made (a) before the thirtieth calendar day following the effective date of this order or (b) later than three months after the effective date of this order unless such period is extended for good cause by the Board or by the Federal Reserve Bank of Chicago pursuant to delegated authority.

By order of the Board of Governors,<sup>3</sup> effective October 7, 1974.

[SEAL] THEODORE E. ALLISON,  
Secretary of the Board.

[FR Doc.74-24273 Filed 10-17-74; 8:45 am]

#### TRUST COMPANY OF GEORGIA

##### Order Approving Retention of Bank

Trust Company of Georgia, Atlanta, Georgia ("Trust Company"), a bank holding company within the meaning of

<sup>2</sup> Dissenting Statement of Governor Mitchell filed as part of the original document. Copies available upon request to the Board of Governors of the Federal Reserve System, Washington, D.C. 20551, or to the Federal Reserve Bank of Chicago.

<sup>3</sup> Voting for this action: Chairman Burns and Governors Sheehan, Bucher, Holland, and Wallach. Voting against this action: Governor Mitchell.

the Bank Holding Company Act, has applied for the Board's approval under section 3(a)(3) of the Act (12 U.S.C. 1842 (a)(3)) to retain indirectly through its wholly-owned subsidiary, Trust Company of Georgia Associates, Atlanta, Georgia ("Associates"), 51.05 percent of the voting shares of The First State Bank of Fitzgerald, Fitzgerald, Georgia ("Bank"), which shares are held by Associates' subsidiary, The First National Bank & Trust Company in Macon, Macon, Georgia ("Macon Affiliate"), in a fiduciary capacity, as executor under a will. The shares of Bank's stock were acquired in a fiduciary capacity subsequent to December 31, 1970.<sup>1</sup>

Notice of the application, affording opportunity for interested persons to submit comments and views, has been given in accordance with section 3(b) of the Act. The time for filing comments and views has expired, and the Board has considered the application and all comments received in light of the factors set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Trust Company's subsidiary, Associates, owns 80 percent of the stock of Macon Affiliate. Macon Affiliate qualified as Executor under a will on April 5, 1974, and as Executor holds sole discretionary authority to exercise voting rights for 51.05 percent of the stock of Bank. As Executor, Macon Affiliate will make distribution of Bank's stock to a trust under the terms of the will, thereby terminating its sole discretionary authority to vote the stock of Bank. In view of the intricacies involved in settlement of the estate, Applicant states that administration of the estate and distribution under the will may require longer than two years and, accordingly, has applied to the Board for retention of the voting rights to such shares of Bank's stock pending final settlement of the estate.

Applicant presently controls six banks with aggregate deposits of \$1.2 billion, representing 11 percent of the total deposits of commercial banks in Georgia, and ranks as the third largest banking organization in the State.<sup>2</sup> Bank (\$10 million deposits) controls approximately one-tenth of 1 percent of total deposits in the State, and is the smaller of the two banks operating in Ben Hill County. The larger banking organization in the county controls 65 percent of total deposits for that area. Applicant's closest subsidiary banking office is located in Macon, approximately 80 miles from

<sup>1</sup> Section 3(a) of the Act requires, in part, Board approval for the retention of bank shares acquired subsequent to December 31, 1970, in a fiduciary capacity with sole discretionary voting rights thereto and provides that such application may be filed within 90 days after the shares are acquired; and if retention is disapproved by the Board, the acquiring bank shall dispose of the shares or its sole discretionary voting rights thereto within two years after issuance of the Board's Order of disapproval.

<sup>2</sup> All banking data are as of December 31, 1973.

Bank. There is no present meaningful competition between Applicant's subsidiary banks and Bank and, in view of the fact that the sole discretionary authority to vote the shares of Bank will be terminated under the terms of the will, competitive considerations are regarded as being consistent with approval of the application.

The financial and managerial resources and prospects of Applicant, its subsidiaries, and Bank are regarded as satisfactory and consistent with approval of the application. The convenience and needs of the area involved would not be significantly affected by Applicant's retention of shares of Bank. It is the Board's judgment that approval of the proposal would be in the public interest and that the application should be approved.

On the basis of the record, the application is approved for the reasons summarized above.

By order of the Board of Governors,<sup>3</sup> effective October 7, 1974.

[SEAL] THEODORE E. ALLISON,  
Secretary of the Board.

[FR Doc.74-24274 Filed 10-17-74; 8:45 am]

#### FOREIGN-TRADE ZONES BOARD

[Order No. 101]

##### NATIONAL ASSOCIATION OF FOREIGN-TRADE ZONES

##### Endorsement of Customs Procedures in Charging for Its Services

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), and the Foreign-Trade Zones Board Regulations (15 CFR Part 400), the Foreign-Trade Zones Board (the Board) adopts the following order:

The Foreign-Trade Zones Board, having considered the complaint of the National Association of Foreign-Trade Zones submitted on April 29, 1974 concerning Customs' method in charging for its zone services, the reports prepared for the Board thereon, including the report and recommendation of the Committee of Alternates on the matter, concludes that the method used by the U.S. Customs Service in charging for its services performed in zones is in conformance with the Foreign-Trade Zones Act (19 U.S.C. 81) and the Board's regulations (15 CFR Part 400).

In endorsing Customs' method the Board recognizes that zone security is a matter primarily within the Treasury Department's jurisdiction. The Board urges that Department and directs the Executive Secretary to cooperate with zone grantees and operators whenever possible in their efforts to reduce operating costs.

<sup>3</sup> Voting for this action: Vice Chairman Mitchell and Governors Sheehan, Bucher, Holland, and Wallach. Absent and not voting: Chairman Burns.

Signed at Washington, D.C. this 10th day of October, 1974.

[SEAL] **FREDERICK B. DENT,**  
*Secretary of Commerce, Chair-  
man and Executive Officer,  
Foreign-Trade Zones Board.*

Attest:

**JOHN J. DAPONTE, Jr.,**  
*Executive Secretary.*

[FR Doc.74-24295 Filed 10-17-74;8:45 am]

## GENERAL ACCOUNTING OFFICE REGULATORY REPORTS REVIEW Receipt of Proposals

The following requests for clearance of reports intended for use in collecting information from the public were received by the Regulatory Reports Review Staff, GAO, on October 3, 1974. See 44 U.S.C. 3512 (c) & (d). The purpose of publishing this list in the FEDERAL REGISTER is to inform the public of such receipt.

The list includes the title of each request received; the name of the agency sponsoring the proposed collection of information; the agency form number, if applicable; and the frequency with which the information is proposed to be collected.

Further information about the items on this list may be obtained from the Regulatory Reports Review Officer, 202-376-5425.

### FEDERAL ENERGY ADMINISTRATION

Request for clearance of a single time letter of inquiry requesting information from a representative number (30) of utilities, equipment manufacturers, and architect-engineering firms relating to component standards applicable to central station thermal power facilities; respondent burden is estimated at 2 hours for each respondent per response.

**NORMAN F. HEYL,**  
*Regulatory Reports  
Review Officer.*

[FR Doc.74-24316 Filed 10-17-74;8:45 am]

## GENERAL SERVICES ADMINISTRATION

[Federal Property Management Reg.;  
Temporary Reg. F-305]

### SECRETARY OF DEFENSE

#### Delegation of Authority

1. *Purpose.* This regulation delegates authority to the Secretary of Defense to represent the consumer interests of the executive agencies of the Federal Government in an electric rate increase proceeding.

2. *Effective date.* This regulation is effective immediately.

3. *Delegation.* a. Pursuant to the authority vested in me by the Federal Property and Administrative Services Act of 1949, 63 Stat. 377, as amended, particularly sections 201(a) (4) and 205

(d) (40 U.S.C. 481(a) (4) and 486(d)), authority is delegated to the Secretary of Defense to represent the consumer interests of the executive agencies of the Federal Government before the Arkansas Public Service Commission in a rate proceeding involving electric service supplied by the Arkansas Power and Light Company (Docket No. 2527).

b. The Secretary of Defense may redelegate this authority to any officer, official, or employee of the Department of Defense.

c. This authority shall be exercised in accordance with the policies, procedures, and controls prescribed by the General Services Administration, and, further, shall be exercised in cooperation with the responsible officials, and employees thereof.

**ARTHUR F. SAMPSON,**  
*Administrator of General Services.*

OCTOBER 10, 1974.

[FR Doc.74-24276 Filed 10-17-74;8:45 am]

## OFFICE OF MANAGEMENT AND BUDGET

### CLEARANCE OF REPORTS

#### List of Requests

The following is a list of requests for clearance of reports intended for use in collecting information from the public received by the Office of Management and Budget on October 14, 1974 (44 U.S.C. 3509). The purpose of publishing this list in the FEDERAL REGISTER is to inform the public.

The list includes the title of each request received; the name of the agency sponsoring the proposed collection of information; the agency form number, if applicable; the frequency with which the information is proposed to be collected; the name of the reviewer or reviewing division within OMB, and an indication of who will be the respondents to the proposed collection.

The symbol (x) identifies proposals which appear to raise no significant issues, and are to be approved after brief notice through this release.

Further information about the items on this Daily List may be obtained from the Clearance Office, Office of Management and Budget Washington, D.C. 20503, (202-395-4529), or from the reviewer listed.

#### NEW FORMS

##### CIVIL SERVICE COMMISSION

Supplemental Exp. Form for Air Traffic Control Spec. (Denver Region), Form DE:X-68, Occasional, Caywood (395-3443), Job Applicants.

##### GENERAL SERVICES ADMINISTRATION

Survey of Overtime Claimants: Form ----, Single Time, Lowry (395-3772), Present and Former GSA FPO's.

##### DEPARTMENT OF HEALTH, EDUCATION AND WELFARE

Food and Drug Administration: State Agency Telecommunications Log, Form FDA 75-3, Monthly, Lowry (395-3772), State Agencies.

Health Resources Administration: Professional Standards Review Organization Evaluation Study, Form HPSRO 1007, Single Time, HRD (395-3532)/Collins (395-3756), Representative Sample of Hospitals in Planning PSRO's Areas.  
Death Registration and Chronic Disease Project, Form HRANCHS 1007, Single Time, Hall (395-4697), Relatives of Deceased.

##### DEPARTMENT OF HEALTH, EDUCATION AND WELFARE

National Institute of Education: Career Education Curriculum Survey, Form ----, Single Time, Planchon (395-3898), Curriculum Specialists in 64 school districts.

##### DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Community Planning and Development: Claim Forms and Dwelling Inspection Record For Use By Persons Entitled to Payments Under the Uniform Act, Form ----, Occasional, HRD (395-3532)/GSA (Cohn)/Caywood (395-3443), Persons Displaced by HUD-assisted Activities.

##### NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES/NATIONAL ENDOWMENT FOR THE ARTS

State Arts Agency Survey Questionnaire: Form ----, Single Time, Planchon (395-3898), Directors of State Arts Agencies.

#### REVISIONS

##### DEPARTMENT OF TRANSPORTATION

Coast Guard: Master's Oath for Renewal of License of Vessel, Form CG-1280, Annual, Lowry (395-3772), Masters and/or Owners of Vessels.

#### EXTENSIONS

##### DEPARTMENT OF DEFENSE

Department of the Army: Record of Induction, Form DD-47, Occasional, Evinger (395-3648), Registrants Inducted into Armed Forces.

##### DEPARTMENT OF HEALTH, EDUCATION AND WELFARE

Social Security Administration: Old-Age or Disability Insurance Benefit Questionnaire, Form SSA-784, Occasional, Evinger (395-3648).  
Questionnaire Regarding Survivors Insurance Benefits, Form SSA-786, Occasional, Evinger (395-3648).

Application for Search of Census Records for Proof of Age, Form SSA-1535, Occasional, Evinger (395-3648).  
Supplemental Statement Regarding Income From Farming and/or Gardening Activities, Form SSA-764, Occasional, Evinger (395-3648).

Agreement to Refund Overpayment, Form SSA-663, Occasional, Evinger (395-3648).

##### DEPARTMENT OF HEALTH, EDUCATION AND WELFARE

Social Security Administration: Monthly Intermediary Financial Report, Health Insurance Benefits Program, Form SSA-1522, Occasional, Evinger (395-3648).

Affidavit Showing Right to Receive Money Under Sec. 630 of the California Probate Code, Form SSA-1650, Occasional, Evinger (395-3648).

**PHILLIP D. LARSEN,**  
*Budget and Management Officer.*

[FR Doc.74-24478 Filed 10-17-74;8:45 am]

# SECURITIES AND EXCHANGE COMMISSION

[File No. 500-1]

AVIS, INC.

## Notice of Suspension of Trading

OCTOBER 10, 1974.

The common stock of AVIS, INC. being traded on the New York, Boston, and Pacific Stock Exchanges pursuant to provisions of the Securities Exchange Act of 1934 and all other securities of AVIS, INC. being traded otherwise than on a national securities exchange; and

It appearing to the Securities and Exchange Commission that the summary suspension of trading in such securities on such exchange and otherwise than on a national securities exchange is required in the public interest and for the protection of investors;

Therefore, pursuant to sections 19(a) (4) and 15(c) (5) of the Securities Exchange Act of 1934, trading in such securities on the above mentioned exchange and otherwise than on a national securities exchange is suspended, for the period from October 11, 1974, through October 20, 1974.

By the Commission.

[SEAL] GEORGE A. FITZSIMMONS,  
Secretary.

[FR Doc.74-24310 Filed 10-17-74;8:45 am]

# CHICAGO BOARD OPTIONS EXCHANGE, INC.

## Delaying Amendment to Proposed Amendment to Option Plan

Notice is hereby given that the Chicago Board Options Exchange, Inc. (CBOE) has filed an amendment to a proposed change to its Option Plan filed pursuant to Rule 9b-1 (17 CFR 240.9b-1) delaying its effectiveness of this proposed amendment until the Commission may allow its effectiveness or shall disapprove the change in whole or in part as being inconsistent with the public interest or the protection of investors.

The following proposed change was originally published at 39 FR 32583 on September 9, 1974.

The main thrust of the new proposal, which is a new rule 4.17, would be to prohibit members from entering orders for opening purchase transactions and opening writing transactions (subject to several exceptions) in any series of options as to which, as of the last previous trading day's close, (i) the market price of the underlying stock was more than 5 points below the exercise price and (ii) the option premium was less than one-half point.

Under the proposal there would be automatic imposition and removal of restrictions at the commencement of each trading day depending on whether the stated conditions were met as of the previous close, without the need for any action or notice by the Exchange.

All interested persons are invited to submit their views and comments on the proposed amendment to CBOE's plan either before or after it has become effective. Written statements of views and

comments should be addressed to the Secretary, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to file number 10-54. The proposed amendment is, and all such comments will be, available for public inspection at the Public Reference Room of the Securities and Exchange Commission at 1100 L Street NW., Washington, D.C.

Dated: October 10, 1974.

[SEAL] GEORGE A. FITZSIMMONS,  
Secretary.

[FR Doc.74-24311 Filed 10-17-74;8:45 am]

# SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area 1037]

## NEW YORK

### Declaration of Disaster Loan Area

Whereas, it has been reported that during the month of September, because of the effects of a certain disaster, damage resulted to property located in the State of New York;

Whereas, the Small Business Administration has investigated and received reports of other investigations of conditions in the area affected;

Whereas, after reading and evaluating reports of such conditions, I find that the conditions in such area constitute a catastrophe within the purview of the Small Business Act, as amended:

Now, therefore, as Administrator of the Small Business Administration, I hereby determine that:

1. Applications for disaster loans under the provisions of section 7(b) (1) of the Small Business Act, as amended, may be received and considered by the office below indicated from persons or firms whose property situated in Westchester County, New York, and adjacent affected areas, suffered damage or destruction resulting from heavy rains and flooding which occurred on September 2 and 3, 1974. Adjacent areas include only counties within the state for which the declaration is made and do not extend beyond state lines.

Office: Small Business Administration, District Office, 26 Federal Plaza, Room 3100, New York, N.Y. 10007.

2. Applications for disaster loans under the authority of this declaration will not be accepted subsequent to December 9, 1974. EIDL applications will not be accepted subsequent to July 9, 1975.

Dated: October 9, 1974.

THOMAS S. KLEPPE,  
Administrator.

[FR Doc.74-24287 Filed 10-17-74;8:45 am]

# UNITED STATES RAILWAY ASSOCIATION

[Docket No. 211-2]

## CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD CO.

### Application for Loan

Section 211 of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 721) authorizes the United States Railway As-

sociation (Association) in part to make loans to railroads connecting with railroads in reorganization under section 77 of the Bankruptcy Act if the loan is required to prevent the insolvency of the connecting railroad. Section 211(b) requires that the Association publish notice of the receipt of any application thereunder in the FEDERAL REGISTER and afford interested parties an opportunity to comment thereon.

Regulations implementing section 211 in part were published by the Association in the FEDERAL REGISTER on July 24, 1974 (49 CFR Part 921). Notice is hereby given that on September 20, 1974, the Chicago, Rock Island and Pacific Railroad (Rock Island) filed an application pursuant to those regulations for a loan of \$100,000,000, to be used to avoid a short term cash crisis in 1975 and to rehabilitate the Rock Island's plant to increase long term earning power.

Interested parties are invited to submit written comments relevant to this application. Any such submissions must identify, by its Docket No., the application to which it relates, and must be filed with the Docket Clerk, United States Railway Association, Room 2222, Trans Point Building, 2100 Second Street SW., Washington, D.C. 20595, on or before November 18, 1974 to enable timely consideration by USRA. The docket containing the original application and all submissions received shall be available for public inspection at that address, Monday through Friday (holiday excepted) between 8:30 a.m. and 5:00 p.m.

Dated at Washington, D.C., this 23d day of September 1974.

EDWARD G. JORDAN,  
President, United States  
Railway Association.

[FR Doc.74-24445 Filed 10-17-74;8:45 am]

# DEPARTMENT OF LABOR

## Occupational Safety and Health Administration

### STANDARDS ADVISORY COMMITTEE ON HAZARDOUS MATERIALS LABELING

#### Notice of Meeting

Pursuant to section 10(a) (2) of the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given that the Standards Advisory Committee on Hazardous Materials Labeling, established under section 7(b) of the Williams-Steiger Occupational Safety and Health Act of 1970 (29 U.S.C. 656), will meet on Monday, November 4, and Tuesday, November 5, 1974, starting at 9:00 a.m. in Conference Room B, Departmental Auditorium, Constitution Avenue, NW., between 12th and 14th Streets, Washington, D.C. The meeting will be open to the public, and all interested parties are encouraged to attend.

The Standards Advisory Committee on Hazardous Materials Labeling will continue the development of guidelines for the implementation of section 6(b) (7) of the Act with respect to Hazardous Materials. The agenda provides for meetings of three Subcommittees which were established to efficiently study and prepare

recommendations in the following areas: Categorizing and Ranking Hazards of Materials, Labeling and Placards Systems, and Safety Data Sheets and Training Requirements.

Any member of the public wishing to submit written presentations to the Committee may do so by filing such a statement, together with 20 duplicate copies, with the Committee Management Officer by close of business October 25, 1974. Such submissions will be provided to the members of the Committee and will be included in the record of the meeting.

The Committee Chairman may permit oral statements before the Committee by interested persons. Consequently, persons desiring to make an oral presentation to the Committee should submit a written request to be heard, together with 20 duplicate copies, with the Committee Management Officer by close of business October 25, 1974. The request must include the name and address of the person wishing to appear, the capacity in which he will appear, a short summary of the intended presentation, and the approximate amount of time required for his presentation. Such submissions will be provided to the Committee Chairman for his consideration.

Communications and questions about the proceedings should be addressed to:

Julius Jimeno, Committee Management Office, U.S. Department of Labor, Occupational Safety and Health Administration, 1726 M Street, NW, Room 200, Washington, D.C. 20210, Phone: 202/961-2248, 2487.

Signed at Washington, D.C., this 16th day of October, 1974.

JOHN STENDER,  
Assistant Secretary of Labor.

[FR Doc.74-24432 Filed 10-17-74; 8:45 am]

Occupational Safety and Health  
Administration

[V-74-5]

UNION ELECTRIC CO.

Grant of Variance

I. Background. Union Electric Company, No. 1 South Memorial Drive, St. Louis, Missouri 63102 made application pursuant to section 6(d) of the Williams-Steiger Occupational Safety and Health Act of 1970 (84 Stat. 1596; 29 U.S.C. 655) and 29 CFR 1905.11 for a permanent variance, and for an interim order pending a decision on the application for a variance, from the safety standards prescribed in 29 CFR 1910.28 (g) (1). The standard requires that two-point suspension scaffolds be a minimum of 20 inches in width. The facility affected by this application is Union Electric Company, Labadie Plant, Labadie, Missouri 63055. Notice of the application, and of the granting of an interim order, was published in the FEDERAL REGISTER on January 16, 1974 (39 FR 20522). The notice invited interested persons, including affected employers and employees, to submit written data, views, and arguments regarding the grant or denial of the variance requested. In addition, affected employers and employees were

notified of their right to request a hearing on the application for a variance. No written comments or requests for a hearing have been received.

II. Facts. In the inspection and maintenance of the applicant's controlled circulation steam generators it is necessary to raise a two-point suspension scaffold into areas having nominal clearances of 21.45" and 22.44" or less. Certain other equipment has similar close clearance areas requiring the use of the two-point suspension scaffold.

It has been found to be virtually impossible to hoist a 20" wide scaffold into these areas because of the potential hazard of the scaffold becoming wedged. Therefore, the applicant has built a scaffold with a 17½" width which conforms in all other respects to the requirements of § 1910.28(g). This scaffold is used only in the close clearance areas where the 20" width would present a hazard.

III. Decision. Section 1910.28(g) (1) requires that a two-point suspension platform be a minimum of 20" in width. This is intended to provide sufficient space so that employees working on the scaffold will have room to maneuver as required during the performance of their duties.

In the applicant's close clearance areas, such as the controlled circulation steam generators and other similar equipment, there is insufficient clearance to maneuver a 20" wide scaffold without the risk of it becoming wedged. Instead, the applicant is providing a 17½" scaffold for use in the close clearance areas. The inside walls of the equipment provide protection to the employees while performing their work. Therefore, the use of the 17½" scaffold in these areas will provide a place of employment as safe as would be obtained by complying with standard.

IV. Order. Pursuant to authority in section 6(d) of the Williams-Steiger Occupational Safety and Health Act of 1970, and in Secretary of Labor's Order No. 12-71 (36 FR 8754), it is ordered that Union Electric Company be, and it is hereby, authorized to use two-point suspension scaffolds 17½" in width while performing maintenance and inspection operations in the close clearance areas of the steam generators and other equipment, provided that this special scaffold is used only in areas where the clearance does not permit the use of 20" scaffolds. As soon as possible Union Electric Company shall give notice to affected employees of the terms of this order by the same means required to be used to inform them of the application for variance.

Effective date. This order shall become effective on October 18, 1974, and shall remain in effect until modified or revoked in accordance with section 6 (d) of the Williams-Steiger Occupational Safety and Health Act of 1970.

Signed at Washington, D.C. this 9th day of October 1974.

JOHN H. STENDER,  
Assistant Secretary of Labor.

[FR Doc.74-24304 Filed 10-17-74; 8:45 am]

Office of Federal Contract Compliance  
ILLINOIS FAIR EMPLOYMENT PRACTICES  
COMMISSION

Hearing Regarding Equal Employment Requirements for Federally Assisted Construction; Correction

In FR Doc. 74-23936 published in the FEDERAL REGISTER on Tuesday, October 15, 1974 (39 FR 36924), the following Notice of Hearing was published by mistake under the heading Federally Assisted Construction Contracts for Detroit. In order to eliminate any confusion I am republishing the Notice of Hearing on the Illinois Fair Employment Practices Commission Rules and Regulations for Public Contracts with the correct heading.

On August 29, 1974, in accordance with 41 CFR 60-1.4(b) (2) (39 FR 2365, January 21, 1974), the Director of the Office of Federal Contract Compliance announced his determination in the FEDERAL REGISTER (39 FR 29446) that the Illinois Fair Employment Practices Commission rules and regulations for Public Contracts are inconsistent with the basic principles of federal procurement law and, therefore, inconsistent with Executive Order 11246, as amended, and incompatible with the effective implementation of the federal hometown and imposed plans in operation throughout the State of Illinois.

Accordingly, an administrative law judge has been designated to conduct a hearing commencing on October 31, 1974, at 9:30 a.m. in Room 1743, Everett McKinley Dirksen Building, 219 South Dearborn, Chicago, Illinois 60604, to make proposed findings and a recommended decision to the Assistant Secretary of Labor for Employment Standards upon the basis of the record before him. In accordance with 41 CFR 60-1.4 (b) (2), evidence may be presented at the hearing relevant to the issue of whether the Illinois Fair Employment Practices Commission Rules and Regulations for Public Contracts are inconsistent with Executive Order 11246, as amended, or incompatible with the effective implementation of federal hometown and imposed plans in operation throughout the State of Illinois.

We have given the Illinois Fair Employment Practices Commission and the Building Construction Employers' Association of Chicago, Inc. notice of their opportunity to participate in the hearing by registered mail, return receipt requested. All other persons, organizations and other entities affected by OFCC Director's determination may attend and participate in the hearing. Each participant shall have the right to counsel and a fair opportunity to present his case including such questioning of witnesses presented by the other parties as the administrative law judge may deem appropriate in the circumstances.

Interested persons, organizations and other entities affected by the OFCC Director's determination, including the Illinois Fair Employment Practices Commission and the Building Construction Employers' Association of Chicago, Inc.,

who wish to participate in the hearing should so notify Mr. H. Stephen Gordon, Chief Administrative Law Judge, U.S. Department of Labor, 1111 Twentieth Street NW., 720 Vanguard Building, Washington, D.C. 20210, by registered mail, return receipt requested, by the close of business, October 29, 1974. The notice of intention to participate (original and one copy) must state the name and address of the person to appear, and the approximate amount of time required for the presentation. In addition, to the extent practicable, the notice should also include, or be accompanied by, a general statement of the position to be taken with regard to the aforementioned rules and regulations for Public Contracts and of the evidence to be adduced in support of that position. The use of prepared statements by participants, subject to questioning by the other parties, is encouraged. Such prepared statements and all other documents intended to be submitted for the record at the hearing should accompany the notice of intention to participate. All documents should be submitted in duplicate. In addition, the parties should be prepared to provide representatives of each of the parties of record with a copy of all prepared statements and other documents intended to be submitted for the record at the hearing.

Signed at Washington, D.C., this 16th day of October, 1974.

H. STEPHEN GORDON,  
Chief Administrative Law Judge,  
U.S. Department of Labor.

[FR Doc.74-24449 Filed 10-17-74; 8:45 am]

## INTERSTATE COMMERCE COMMISSION

[Notice 612]

### ASSIGNMENT OF HEARINGS

OCTOBER 15, 1974.

Cases assigned for hearing, postponement, cancellation or oral argument appear below and will be published only once. This list contains prospective assignments only and does not include cases previously assigned hearing dates. The hearings will be on the issues as presently reflected in the Official Docket of the Commission. An attempt will be made to publish notices of cancellation of hearings as promptly as possible, but interested parties should take appropriate steps to insure that they are notified of cancellation or postponements of hearings in which they are interested. No amendments will be entertained after the date of this publication.

NO. 36029, Penn Central Transportation Company, George P. Baker, Robert W. Blanchette and Richard C. Bond, Trustees-V-Burlington Northern, Inc., Et Al, now being assigned hearing February 11, 1975, at the Offices of the Interstate Commerce Commission, Washington, D.C.  
NO. 36061, Increased Fares, Transport of New Jersey, now being assigned hearing December 9, 1974 (3 days), at New York, N.Y., in a hearing room to be later designated.

I & S M-28009, Increased Fares, Between New York, N.Y., and New Jersey, now being assigned hearing January 13, 1975 (3 days), at New York, N.Y., in a hearing room to be later designated.

MC 134922 Sub 75, B. J. McAdams, Inc., now being assigned hearing December 12, 1974 (2 days), at New York, N.Y., in a hearing room to be later designated.

FF-C-54, REA Express, Inc.-V-Shulman Air Freight, Inc., now being assigned hearing January 16, 1975 (2 days), at New York, N.Y., in a hearing room to be later designated.

MC 107295 Sub 699, Pre-Fab Transit Co., now being assigned hearing December 3, 1974 (2 days), at Chicago, Ill., in a hearing room to be later designated.

MC 118959 Subs 108, 109, 110, 111, 112, and 113, Jerry Lipps, Inc., now being assigned hearing December 9, 1974 (1 week), at Chicago, Ill., in a hearing room to be later designated.

MC 22278 Sub 45, Takin Bros. Freight Line, Inc., now being assigned hearing December 5, 1974 (2 days), at Chicago, Ill., in a hearing room to be later designated.

MC 139244 Sub 1, Trucking Service, Inc., now being assigned hearing December 3, 1974 (1 day), at Chicago, Ill., in a hearing room to be later designated.

MC 113678 Sub 533, Curtis, Inc., now being assigned hearing December 4, 1974 (3 days), at Chicago, Ill., in a hearing room to be later designated.

MC 135833 Sub 13, B & C Specialized Carriers, Inc., now being assigned hearing December 6, 1974 (1 day), at Chicago, Ill., in a hearing room to be later designated.

MC 139663, Haskins & Sons, Inc., now being assigned hearing December 9, 1974 (3 days), at Chicago, Ill., in a hearing room to be later designated.

MC 139360, Raemarc, Inc., now being assigned hearing December 12, 1974 (2 days), at Chicago, Ill., in a hearing room to be later designated.

MC 128375 Sub 80, Crete Carrier Corporation Extension-Santa Ana, Calif., now being assigned hearing December 3, 1974 (1 day), at Chicago, Ill., in a hearing room to be later designated.

MC 107615 Sub 892, Refrigerated Transport Co., Inc., now being assigned hearing December 4, 1974 (1 day), at Chicago, Ill., in a hearing room to be later designated.

MC 124692 Sub 134, Sammons Trucking, now being assigned hearing December 5, 1974 (2 days), at Chicago, Ill., in a hearing room to be later designated.

MC 48958 Sub 118, Illinois-California Express, Inc., now being assigned hearing December 9, 1974 (3 days), at Chicago, Ill., in a hearing room to be later designated.

MC 119658 Sub 27, North Express, Inc., now being assigned hearing December 12, 1974 (2 days), at Chicago, Ill., in a hearing room to be later designated.

[SEAL] ROBERT L. OSWALD,  
Secretary.

[FR Doc.74-23616 Filed 10-17-74; 8:45 am]

[Finance Docket Nos. 26803; 26804; AB 1 (Sub-No. 26)]

### CHICAGO AND NORTH WESTERN TRANSPORTATION CO.

#### Abandonment Between Certain Lines

Finance Docket No. 26804, Chicago and North Western Transportation Company abandonment between Wakefield and Crofton in Dixon, Cedar and Knox Counties, Nebraska; Finance Docket No.

26803, Chicago and North Western Transportation Company abandonment between Emerson and Thurston, Dakota and Thurston Counties, Nebraska; AB 1 (Sub-No. 26), Chicago and North Western Transportation Company abandonment between Dakota City and Wayne in Dakota, Dixon and Wayne Counties, Nebraska.

Upon consideration of the record in the above-entitled proceedings, and of a staff-prepared environmental threshold assessment survey which is available for public inspection upon request; and

It appearing, that no environmental impact statement need be issued in these proceedings, because these proceedings do not represent a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969, 42 U.S.C. 4321, et seq.; and good cause appearing therefor:

It is ordered, That applicant be, and it is hereby, directed to publish the appended notice in newspapers of general circulation in Dakota, Thurston, Dixon, Wayne, Cedar, and Knox Counties, Nebr., within 15 days of the date of service of this order, and certify to the Commission that this has been accomplished.

And it is further ordered, That notice of this order shall be given to the general public by depositing a copy thereof in the Office of the Secretary of the Commission at Washington, D.C., and by forwarding a copy to the Director, Office of the Federal Register, for publication in the FEDERAL REGISTER.

Dated at Washington, D.C., this 7th day of October, 1974.

By the Commission, Commissioner Tuggle.

[SEAL] ROBERT L. OSWALD,  
Secretary.

Finance Docket No. 26804, Chicago and North Western Transportation Company abandonment between Wakefield and Crofton in Dixon, Cedar and Knox Counties, Nebraska; Finance Docket No. 26803, Chicago and North Western Transportation Company abandonment between Emerson and Thurston, Dakota and Thurston Counties, Nebraska; AB 1 (Sub-No. 26), Chicago and North Western Transportation Company abandonment between Dakota City and Wayne in Dakota, Dixon and Wayne Counties, Nebraska.

The Interstate Commerce Commission hereby gives notice that by order dated October 7, 1974, it has been determined that the proposed abandonments of the lines of railroad of the Chicago and North Western Transportation Company (C&NW) between Wakefield and Crofton, Emerson and Thurston, and Dakota City and Wayne, all in Nebraska and comprising a total distance of 97.5 miles, if approved by the Commission, does not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy

Act of 1969 (NEPA), 42 U.S.C. 4321, et seq., and that preparation of a detailed environmental impact statement will not be required under section 4332(2) (C) of the NEPA.

It was concluded, among other things, that the environmental impacts are not considered significant because traffic over the lines has been at a low volume and prospects for substantial increased demand are speculative, alternate means of transportation are available including rail service over the lines of the Burlington Northern Inc., and the increase in traffic created by diversion to motor carriers will not result in a significant increase in energy consumption nor a significant degradation of the area's air quality or noise levels. Adverse effects which might occur as a result of the proposed action are recognized as including destruction of the few remaining wildlife habitats along the rights-of-way and a possible limitation of economic or industrial development in the area.

This determination was based upon the staff preparation and consideration of an environmental threshold assessment survey, which is available for public inspection upon request to the Interstate Commerce Commission, Office of Proceedings, Washington, D.C. 20423; telephone 202-343-2086.

Interested parties may comment on this matter by the submission of representations to the Interstate Commerce Commission, Washington, D.C. 20423, on or before November 4, 1974.

[FR Doc.74-24336 Filed 10-17-74;8:45 am]

[AB 43 (Sub-No. 5)]

**ILLINOIS CENTRAL GULF RAILROAD CO.  
Abandonment From Foxworth to Columbia,  
and Between Foxworth and Kokomo, in  
Marion County, Mississippi**

Upon consideration of the record in the above-entitled proceeding, and of a staff-prepared environmental threshold assessment survey which is available for public inspection upon request; and

It appearing, that no environmental impact statement need be issued in this proceeding, because this proceeding does not represent a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969, 42 U.S.C. 4321, et seq.; and good cause appearing therefore:

*It is ordered*, That applicant be, and it is hereby, directed to publish the appended notice in a newspaper of general circulation in Marion County, Miss., within 15 days of the date of service of this order, and certify to the Commission that this has been accomplished.

*And it is further ordered*, That notice of this order shall be given to the general public by depositing a copy thereof in the Office of the Secretary of the Commission at Washington, D.C., and by forwarding a copy to the Director, Office of the Federal Register, for publication in the FEDERAL REGISTER.

Dated at Washington, D.C., this 7th day of October, 1974.

By the Commission, Commissioner Tuggle.

[SEAL]

ROBERT L. OSWALD,  
Secretary.

[AB 43 (Sub-No. 5)]

**ILLINOIS CENTRAL GULF RAILROAD COMPANY  
ABANDONMENT FROM FOXWORTH  
TO COLUMBIA, AND BETWEEN FOXWORTH  
AND KOKOMO, IN MARION COUNTY,  
MISSISSIPPI**

The Interstate Commerce Commission hereby gives notice that by order dated October 7, 1974, it has been determined that the proposed abandonment between Foxworth and Columbia, and between Foxworth and Kokomo in Marion County, Miss., a distance of approximately 11.88 miles, if approved by the Commission, does not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321, et seq., and that preparation of a detailed environmental impact statement will not be required under section 4332(2) (C) of the NEPA.

It was concluded, among other things, that the environmental effects of the proposed action are not considered significant because all stations on the line will continue to be served directly by alternate rail line already in existence. In addition, no major ecological impacts would result should the abandonment be authorized. The recreation potential of the abandoned right-of-way would be consistent with State and local goals and policies in the Pearl River basin.

This determination was based upon the staff preparation and consideration of an environmental threshold assessment survey, which is available for public inspection upon request to the Interstate Commerce Commission, Office of Proceedings, Washington, D.C. 20423; telephone 202-343-2086.

Interested parties may comment on this matter by the submission of representations to the Interstate Commerce Commission, Washington, D.C. 20423, on or before November 4, 1974.

[FR Doc.74-24335 Filed 10-17-74;8:45 am]

[Notice 171]

**MOTOR CARRIER BOARD TRANSFER  
PROCEEDINGS**

OCTOBER 15, 1974.

Synopses of orders entered by the Motor Carrier Board of the Commission pursuant to sections 212(b), 206(a), 211, 312(b), and 410(g) of the Interstate Commerce Act, and rules and regulations prescribed thereunder (49. CFR Part 1132), appear below:

Each application (except as otherwise specifically noted) filed after March 27, 1972, contains a statement by applicants that there will be no significant effect on the quality of the human environment

resulting from approval of the application. As provided in the Commission's Special Rules of Practice any interested person may file a petition seeking reconsideration of the following numbered proceedings on or before November 7, 1974. Pursuant to section 17(8) of the Interstate Commerce Act, the filing of such a petition will postpone the effective date of the order in that proceeding pending its disposition. The matters relied upon by petitioners must be specified in their petitions with particularity.

No. MC-FC-75294. By order of August 6, 1974, the Motor Carrier Board approved the transfer to Econo Lines, Inc., P.O. Box 623, Omaha, Nebr. 68101, of the operating rights in Certificate No. MC 4646 issued January 13, 1941 to Rex E. Dickerson and Robert F. Dickerson, a partnership, doing business as Dickerson Bros., Sutherland, Nebr. 69165, authorizing the transportation of various commodities from, to and between specified points and areas in Colorado and Nebraska.

No. MC-FC-75345. By order entered 10/11/74, the Motor Carrier Board approved the transfer to Commercial Transfer, Inc., Fresno, Calif., of the operating rights set forth in Certificate No. MC 74248, issued July 18, 1968, and Certificate of Registration No. MC 74248 (Sub-No. 2), issued July 18, 1968, to Audrey Melikian, doing business as Melikian Trucking Company, Fresno, Calif., authorizing the transportation of raisins, canned goods, and wine, from Fresno, Calif., and points within 25 miles thereof, to San Francisco, Oakland, and Stockton, Calif.; groceries, from San Francisco, Oakland, and Stockton, Calif., to Fresno, Calif.; and various specified commodities, between specified points in California. Granville T. Harper, 140 Montgomery St., San Francisco, Calif. 94104, attorney for applicants.

No. MC-FC-75398. By order entered 10/9/74, the Motor Carrier Board approved the transfer to J. G. Weeks & Son, Inc., Pahokee, Fla., of the operating rights set forth in Certificate of Registration No. MC 128775 (Sub-No. 1), issued March 1, 1968, to Scarlet Truck Service, Inc., West Palm Beach, Fla., evidencing a right to engage in transportation in interstate or foreign commerce, of raw sugar in bulk over irregular routes and on irregular schedules, between points and places in Palm Beach County, Fla. Felix A. Johnston, Jr., 547 N. Monroe St., Tallahassee, Fla. 32301, attorney for applicants.

No. MC-FC-75400. By order entered 10/11/74, the Motor Carrier Board approved the transfer to Interstate Express, Inc., Chicago, Ill., of the operating rights set forth in Certificate No. MC 45657 (Sub-No. 26), and MC 45657 (Sub-No. 46), issued by the Commission February 27, 1961, and December 19, 1966 (as corrected January 18, 1967), respectively, to Plc-Walsh Freight Co., St. Louis, Mo., au-

thorizing the transportation of roofing and building materials, scrap rags, fibre-board or paperboard boxes, empty containers and pallets, glass containers, caps, covers, tops, rings, and stoppers for glass containers, and cullet, from, to or between points in Illinois, Iowa, Indiana, Missouri, the lower peninsula of Michigan, Kentucky, and Tennessee. B. W. La Tourette, Jr., 11 S. Meramec Ave., St. Louis, Mo. 63105, attorney for applicants.

No. MC-FC-75402. By order entered 10/9/74 the Motor Carrier Board approved the transfer to John C. Lino, doing business as Eagle Express, E. Boston,

Mass., of Certificate of Registration No. MC 120943 (Sub-No. 1), issued January 28, 1964, to A. Francis, Inc., Swampscott, Mass., evidencing a right to engage in transportation, in interstate or foreign commerce, of general commodities, anywhere within the Commonwealth of Massachusetts. Mary E. Kelley, 11 Riverside Ave., Medford, Mass. 02155, attorney for transferee, and Arnold J. Levin, 10 Lowell St., Peabody, Mass. 01960, attorney for transferor.

[SEAL]

ROBERT L. OSWALD,  
*Secretary.*

[FR Doc.74-24337 Filed 10-17-74;8:45 am]



# **federal register**

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**PART II**



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## **ENVIRONMENTAL PROTECTION AGENCY**

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**CONTROL OF AIR  
POLLUTION FROM NEW  
MOTOR VEHICLES AND  
NEW MOTOR ENGINES**

## Title 40—Protection of Environment

CHAPTER I—ENVIRONMENTAL  
PROTECTION AGENCY

[FRL-272-3]

PART 85—CONTROL OF AIR POLLUTION  
FROM NEW MOTOR VEHICLES AND  
NEW MOTOR VEHICLE ENGINESCertification of New Vehicles Intended for  
Initial Sale at High Altitude—1977  
Model Year

On October 12, 1973, EPA published a notice of proposed rulemaking (NPRM) which would require that new motor vehicles offered for sale in high altitude regions in the Nation be certified for compliance with Federal emission standards at high altitude. The NPRM addressed the certification procedures for high altitude vehicles and the problems which occur when a vehicle designed to comply with emission standards at sea level is operated at high altitude. The NPRM also solicited public comment to determine if significant portions of the established test procedures were irrelevant or impractical, and to confirm that the problem of vehicle emissions at high altitude was serious enough to warrant additional Federal regulation of new motor vehicles offered for sale at high altitude.

The basic purpose of the regulations promulgated today is to require that manufacturers demonstrate through the certification process that vehicles that will be sold for initial licensing, registration, or titling at high altitudes are capable of meeting emission standards at such altitude. The Clean Air Act requires that all new vehicles, wherever sold or operated, meet the section 202 emission standards. In recognition of the fact that some vehicles may not meet the applicable emission standards when operated at high altitude, EPA is promulgating regulations which require that a vehicle manufacturer demonstrate through certification procedures that appropriate prototype vehicles meet emission standards at high altitudes.

Some manufacturers are expected to meet standards at high altitude by the production of two types of vehicles, one with a fixed calibration to meet the section 202 standards at high altitude and another calibrated to meet the standards at a nominally low altitude. Other manufacturers may produce automatically compensated vehicles (i.e., vehicles that meet standards at all altitudes).

The first approach (fixed calibration) presents a difficult situation in terms of enforcement and ultimate fulfillment of the goals of the Act. EPA has no assurance that the high altitude car will meet standards at low altitude, nor does it have assurance that a low altitude car will conform at high altitude. Indeed, there is reason to believe that cars designed and calibrated to meet the section 202 standards only at high altitude will have to be modified in order to meet the standards when operated at an altitude other than that intended by the original design (i.e., low altitude). An apparent burden which EPA must assume under

this approach is to assure that only high altitude cars are sold at high altitude.

To assure that manufacturers produce vehicles which comply with standards when sold and in use, Congress enacted section 207 of the Act. Section 207(a) (the emission control warranty) provides that each vehicle must be warranted to meet the standards at the time of sale. Similarly, any determination made under section 207(c), which authorizes the recall of nonconforming vehicles at any altitude, should be based on conformance of in-use vehicles with the section 202 standards where the vehicles are in-use.

Thus, even though EPA only requires, through certification, that vehicles demonstrate before sale compliance with the emission standards at two relatively discrete altitudes, the manufacturer is required by the Act to produce vehicles that meet the applicable emission standards wherever sold and operated. While enforcement of the sale of high altitude vehicles in high altitude locations will not be attended by an extensive governmental program involving monitoring, reporting, and auditing, EPA may take the following actions regarding noncompliance:

1. EPA may bring legal action under sections 203(a) and 205 of the Act against any manufacturer who offers for sale or sells for initial titling or sale at high altitude any vehicle which is not covered by a certificate of conformity for high altitude.

2. EPA may also require a manufacturer, pursuant to section 207(c), to recall and modify any class or category of vehicles which EPA determines does not conform to the section 202 standards when in actual use.

3. Any manufacturer who sells a vehicle at any elevation which does not meet the standards at that elevation will be liable under the warranty of section 207(a). To give impetus to this deterrent to selling nonconforming vehicles, EPA, the state, or any other governmental unit may join the claimant (i.e., the vehicle owner) in order to establish that the vehicle in question was not designed, built, and equipped so as to conform at the time of sale with the section 202 standards. Any concerned state may establish inspection or testing procedures designed to determine whether in-use vehicles are designed to meet standards at its altitude.

The regulations reflect the Agency's determination that liability for the sale of nonconforming vehicles should remain with the manufacturer. In this respect, the regulations clearly indicate the locations in which high altitude vehicles must be sold, and place the responsibility for assuring that low altitude vehicles are in fact not sold at high altitude locations directly on the manufacturer.

The NPRM specified that only vehicles certified for sale at high altitude may be sold in locations above 1219 meters (4000 feet) in elevation, and that vehicles certified for sale at low altitude must be sold exclusively in locations below 1219 meters (4000 feet). The final regulations have been revised to reflect the following two considerations:

1. A vehicle certified for sale only at high altitude using a fixed calibration will have been modified to provide for leaner (less fuel to air) mixtures. When such a vehicle is driven at low altitude, the mixture is leaned even further due to the greater density of air at lower elevations. This extremely lean-carbureted vehicle would, in all probability, drive poorly and have poor fuel economy. It would not be in the best interest of a vehicle manufacturer to sell a poorly performing high altitude vehicle in a low altitude location.

2. It is difficult to determine whether it is best, in terms of emission and fuel economy performance, to sell a high altitude or low altitude vehicle at locations slightly below 1219 meters (4000 feet). The determination in this regard may vary from one vehicle design to another. Thus, the manufacturer should be permitted to sell at those locations (i.e., slightly below 1219 meters (4000 feet)), whichever type vehicle he believes will accommodate the requirement that vehicles meet the section 202 standards wherever sold.

Therefore, while the regulations make it a violation of the Act to sell a low altitude vehicle above 1219 meters (4000 feet), they do not restrict the sale of high altitude vehicles to high altitude areas exclusively. The regulations require that manufacturers take steps to assure themselves that only high altitude vehicles are sold above 1219 meters (4000 feet). For those other locations which the manufacturer determines appropriate, high altitude vehicles may be sold with the constraint that they remain subject to the section 207 (a) and (b) warranties and the section 207(c) recall where the vehicles do not meet the section 202 standards. This approach is deemed appropriate in that it does not arbitrarily limit the consumer who lives at an elevation of 1218 meters (3997 feet) to purchasing a low altitude vehicle, and in that it remains the responsibility of the manufacturer to determine which of his vehicles (i.e., the high altitude or low altitude) actually meets the standards at those locations of initial licensing, registration, or titling which may be slightly below 1219 meters (4000 feet).

Several portions of the proposal have been modified based on the comments received. The contents of the final regulations are as follows:

1. The provision of the NPRM which would have required mileage accumulation on high altitude vehicles at high altitude has been deleted. The regulations promulgated herein allow mileage accumulation on high altitude vehicles to occur at any altitude. The Agency expects that two different approaches to the high altitude emissions problem will be taken by the auto industry. Manufacturers may elect to equip high altitude vehicles either with (1) a fixed calibration allowing vehicles to meet emission standards at one representative altitude, or (2) automatically compensated components allowing vehicles to meet emission standards at any elevation. For vehicles of the first type (operated with

fixed modifications), test vehicles may be modified after mileage accumulation at low altitude to be consistent with the design required for correct operation at high altitude. For vehicles of the second type (operating with automatic compensation), no modification to the test vehicle's emission control system will be made either for mileage accumulation or zero mile testing at any altitude, as the vehicle's emission control system would be designed to meet emission standards at any altitude. Vehicles of both types are required to undergo emission testing at the 6436 kilometer (4000 mile) test point under high altitude conditions.

2. Because the Agency has deleted the requirement to accumulate mileage on high altitude vehicles at high altitude, emission measurements when appropriate may be made on high altitude certification test vehicles using a test technique now reserved for evaluating running changes, i.e., the back-to-back test. Back-to-back tests are run to evaluate the effects of a change to the emission control system made by a manufacturer during the production of a vehicle. The running change test vehicle is tested in the "before" condition (i.e., without the change), modified, and then tested in the "after" condition (i.e., with the change incorporated). In a similar manner, some test vehicles may be evaluated for purposes of determining compliance with the standard by accumulating mileage on a vehicle calibrated for low altitude, testing the vehicle under low altitude conditions, changing the calibration of the vehicle to the high altitude configuration, and then testing the vehicle under high altitude conditions.

3. The NPRM would have required that, beginning with the 1976 model year, new motor vehicles offered for sale at high altitude demonstrate compliance with Federal emission standards at high altitude. Comments in response to the NPRM indicated that:

a. Sufficient test facilities are not currently available to the auto industry to support the development and certification workload should the regulations become effective with the 1976 model year, and

b. Development of emission control systems for vehicles which are capable of meeting the standards at high altitude has not progressed sufficiently to allow the imposition of high altitude certification regulations beginning with the 1976 model year.

EPA has assessed the current availability of high altitude test facilities and has found them to be extremely limited. In addition, EPA agrees that serious lead time considerations exist for the auto industry in developing and certifying vehicles for sale in high altitude locations. Accordingly, the regulations have been revised to become effective for the 1977 model year.

4. To allow flexibility in both industry testing and EPA confirmation of industry test results, the definition of "high altitude conditions" has been added to the final regulations. This added definition will allow high altitude testing to be per-

formed either in a test facility located at 1586 meters (5200 feet), plus or minus 274 meters (900 feet) in elevation, or in a pressure chamber chassis dynamometer under equivalent barometric conditions of 83.48 kPa (24.72 inHg), plus or minus 2.77 kPa (0.82 inHg).

5. One comment suggested that the test fuel specification for vehicles tested at low altitudes was not appropriate when testing vehicles at high altitude. The commenter pointed out that fuels available in high altitude locations are typically lower in volatility than fuels available nationwide, since the reduced barometric pressure at high altitude allows the use of lower volatility fuel. EPA agrees, and has broadened the test fuel specification for vehicles tested at high altitude.

6. The regulations require that manufacturers publish as part of the maintenance instructions to be provided to the ultimate purchaser whatever modifications, if any, need to be performed on high altitude vehicles when moved to a low altitude location. If the vehicle was not designed for conversion to provide for proper functioning at low altitude, the regulations require that the maintenance instructions include a statement to that effect.

7. The NPRM proposed that manufacturers whose projected sales of new vehicles at high altitude is less than 1000 vehicles per engine family may request a reduction in the high altitude test fleet for that engine family. In view of the elimination of the proposed requirement that high altitude test vehicles must accumulate mileage at high altitude (which substantially reduces the test burden associated with high altitude vehicle certification), the provision which would have allowed a reduction in the high altitude test fleet for small-volume manufacturers has been deleted. The regulations contain test requirements for high altitude vehicles which cannot be reduced below the technically supportable sound minimums specified, which are parallel to the already reduced requirements permitted small-volume manufacturers, and which are now not unnecessarily burdensome to the small-volume manufacturer.

8. The State of Colorado requested that EPA consider lowering the 1219 meter (4000 feet) definition of high altitude to 915 meters (3000 feet) to include all of Colorado. For purposes of the high altitude issue, cities in altitudes above 783 meters (2500 feet) were considered. Roughly interpolated data show emission levels at 783 meters (2500 feet) to be unacceptably high. However, that data has been interpolated from test data obtained at or near sea level and test data obtained at 1646 meters (5400 feet) in elevation (Aurora, Colorado). No test facilities exist in the U.S. in the altitude range 783 to 1219 meters (2500 to 4000 feet). While valid technical judgments can be made about the emission levels of vehicles operated above 1219 meters (4000 feet) based on emission data generated at 1646 meters (5400 feet) (i.e., that they exceed the standards), to comment on expected emission levels of ve-

hicles operated at 783 meters (2500 feet) involves much speculation. As the Agency is acting to correct a situation that is undesirable if not unacceptable under the Clean Air Act, i.e., the sale of new motor vehicles which do not comply with emission standards at the location of initial sale, the most technically supportable (based on available data) definition for location of initial sale is above 1219 meters (4000 feet). To lower the definition of high altitude to 783 meters (2500 feet) the Agency would need a data base which demonstrates that new motor vehicles sold at 783 meters (2500 feet) actually do not comply with emission standards at the location of initial sale. No such data base exists. Therefore, the final regulations retain the definition of the affected region as areas above 1219 meters (4000 feet) in elevation.

The regulations promulgated herein require manufacturers to certify new motor vehicles designed for initial sale at high altitudes to comply with emission standards at those altitudes. Vehicles which are not so certified may not be legally sold at high altitudes.

These amendments are applicable to light-duty gasoline-fueled vehicles, light-duty diesel vehicles, and light-duty trucks beginning with the 1977 model year, and are issued under authority of sections 206 and 301 of the Clean Air Act as amended (42 U.S.C. 1857f-5, 1857g) and are effective November 18, 1974.

Dated: October 10, 1974.

JOHN QUARLES,  
Acting Administrator.

Part 85, Title 40 of the Code of Federal Regulations as applicable to 1977 and later model year light-duty gasoline-fueled vehicles, light-duty Diesel vehicles, and light-duty trucks, is amended as follows:

1. In § 85.002, paragraph (a) (31) and (32) are revised. As amended, the section reads as follows:

§ 85.002 Definitions.

(a) \* \* \*

(31) "High altitude" means any elevation over 1219 meters (4000 feet).

(32) "High altitude conditions" means a test altitude of 1585 meters (5200 feet), plus or minus 274 meters (900 feet), or equivalent observed barometric test conditions of 83.48 kPa (24.72 inches Hg), plus or minus 2.77 kPa (0.82 inches Hg).

§ 85.003 [Amended]

2. In § 85.003, the following abbreviation is added to the list of abbreviations: kPa—Kilopascal(s).

3. In § 85.077-4, paragraph (b) is revised. As amended, the section reads as follows:

§ 85.077-4 Required data.

(b) (1) Emission data on such vehicles tested in accordance with the applicable test procedures of this subpart and in such numbers as therein specified, which will show their emissions after zero kilo-

meters (zero miles) and 6436 kilometers (4000 miles) of operation.

(2) Emission data on those vehicles selected under § 85.077-5(b)(5) and tested in accordance with the applicable test procedures of this subpart and in such numbers as therein specified, which shall be tested at zero kilometers (zero miles) at any altitude, and under high altitude conditions after 6436 kilometers (4000 miles) of operation at any altitude.

4. In § 85.077-5, paragraph (b) (5) and (6) are revised. As amended, the section reads as follows:

§ 85.077-5 Test vehicles.

(b) *Emission data vehicles.* \* \* \*

(5) The administrator will also select one vehicle for each engine-system combination within an engine family for which vehicles are to be sold to ultimate purchasers at high altitude.

(6) The Administrator may combine testing requirements for any vehicle selected under subparagraph (5) of this paragraph with the testing requirements for any similar vehicle in the same engine-system combination selected under subparagraphs (2), (3), or (4) of this paragraph by requiring a vehicle selected for testing under subparagraphs (2), (3), or (4) to be modified (if necessary) after mileage accumulation and emission testing for the purpose of demonstrating compliance in accordance with § 85.077-4(b)(2).

5. In § 85.077-6, paragraph (b) is revised. As amended, the section reads as follows:

§ 85.077-6 Maintenance.

(b) (1) Adjustment of engine idle speed on emission data vehicles may be performed once before the 6436 kilometer (4000 mile) test point. Any other engine, emission control system, or fuel system adjustment, repair, removal, disassembly, cleaning, or replacement on emission data vehicles shall be performed only with the advance approval of the Administrator.

(2) Maintenance on emission data vehicles selected under § 85.077-5(b)(5) and permitted to be tested for purposes of § 85.077-4(b)(2) under the provisions of § 85.077-5(b)(6) may be performed in conjunction with emission control system modifications at the 6436 kilometer (4000 mile) test point, and shall be performed in accordance with the maintenance instructions to be provided to the ultimate purchaser required under §§ 85.077-38(a), (3) and (4).

(3) Maintenance on those emission data vehicles selected under § 85.077-5(b)(5) which are not capable of being modified in the field for the purpose of complying with emission standards at an altitude other than intended by the original design, may be performed in conjunction with the emission control system modifications at the 6436 kilometer (4000 mile) test point, and shall

be approved in advance by the Administrator.

6. In § 85.077-7, paragraph (a) is revised. As amended, the section reads as follows:

§ 85.077-7 Mileage accumulation and emissions measurement.

(a) (1) Emission data vehicles: Each emission data vehicle shall be driven 6436 kilometers (4000 miles) with all emission control systems installed and operating. Complete exhaust emission and fuel evaporative emission tests (see § 85.077-9(a)) shall be conducted at zero kilometers (zero miles) and 6436 kilometers (4000 miles) unless the Administrator determines, based on data submitted under § 85.077-5(f), that only the exhaust emission tests (see § 85.077-9(b)) shall be conducted at zero kilometers (zero miles) and 6436 kilometers (4000 miles).

(2) The emission data vehicle(s) selected for testing under § 85.077-5(b)(5) shall be driven 6436 kilometers (4000 miles) at any altitude. Emission tests shall be conducted at zero kilometers (zero miles) at any altitude and

6436 kilometers (4000 miles) under high altitude conditions.

(3) The emission data vehicle(s) selected for testing under § 85.077-5(b)(5) and permitted to be tested for purposes of § 85.077-4(b)(2) under the provisions of § 85.077-5(b)(6) shall be driven 6436 kilometers (4000 miles) at low altitude. Emission tests shall be conducted at zero kilometers (zero miles) at low altitude and 6436 kilometers (4000 miles) under both low and high altitude conditions. For the purposes of this subparagraph, low altitude means any elevation less than 549 meters (1800 feet).

7. In § 85.077-10, paragraph (a) is revised. As amended, the section reads as follows:

§ 85.077-10 Gasoline specifications.

(a) Fuel having the following specifications will be used by the Administrator in exhaust and evaporative emission testing. Fuels having the following specifications or substantially equivalent specifications approved by the Administrator shall be used by manufacturers in exhaust and evaporative emission testing, except that the lead and octane specifications do not apply.

Item	ASTM designation	Loaded	Unloaded
Octane, research, minimum	D1656	109	00
Pb. (organic), grams/U.S. gallon		1.4	0.09-0.05
Distillation range:			
TBP, °F	D86	76-95	75-95
10 percent point, °F	D86	129-135	129-135
50 percent point, °F	D86	239-259	239-259
90 percent point, °F	D86	309-325	309-325
EP, °F (maximum)	D86	415	415
Sulphur, weight percent, maximum	D1266	0.10	0.10
Phosphorus, grams/U.S. gallon, maximum		0.01	0.05
RVP, <sup>1</sup> pounds	D323	8.7-9.2	8.7-9.2
Hydrocarbon composition:			
Olefins, percent, maximum	D1319	10	10
Aromatics, percent, maximum	D1319	35	35
Saturates	D1319	Remainder	Remainder

<sup>1</sup> Minimum:

<sup>2</sup> For testing at altitudes above 1,219 meters (4,000 feet) the specified range is 7.5-10.5.

<sup>3</sup> For testing which is unrelated to fuel evaporative emission control, the specified range is 8.0-9.2.

<sup>4</sup> For testing at altitudes above 1,219 meters (4,000 feet) the specified range is 7.9-9.2.

8. In § 85.077-30, paragraphs (a) (1), (3), (4), and (5) and (b) (1) (i), (ii), and (iv) are revised. As amended, the section reads as follows:

§ 85.077-30 Certification.

(a) (1) If, after a review of the test reports and data submitted by the manufacturer, data derived from any inspection carried out under § 85.006(c), and any other pertinent data or information, the Administrator determines that a test vehicle(s) meets the requirements of the Act and this subpart, he will issue a certificate of conformity with respect to such vehicle(s) except in cases covered by paragraph (c) of this section. The certificate will state which vehicles are certified for sale at high altitude.

(3) A violation of section 203(a)(1) of the Clean Air Act occurs when any manufacturer sells, offers for sale, or delivers for introduction into commerce at high altitude locations any motor vehi-

cle subject to the regulations under the Act which is not covered by a certificate of conformity issued under this subpart, unless such manufacturer has substantial reason to believe that such motor vehicle will not be sold to an ultimate purchaser for use at a high altitude location.

(4) For the purpose of paragraph (a) (3) "high altitude location" means the intended location of registration, licensing, or titling of such motor vehicle by the ultimate purchaser, such location identified by name and altitude.

(5) For the purpose of paragraph (a) (3) determination of "high altitude location" shall rest with the U.S. Geological Survey, as published in that Agency's 1:250,000 scale series of topographic maps for the United States.

(b) (1) \* \* \*

(i) A test vehicle selected under § 85.077-5(b)(2) or (4) shall represent all vehicles in the same engine family of the same engine displacement-exhaust emission control system-evaporative emission control system combination to

be sold below 1219 meters (4000 feet) in elevation.

(ii) A test vehicle selected under § 85.077-5(b)(3) shall represent all vehicles in the same engine family of the same engine displacement-exhaust emission control system-transmission type-fuel system combination to be sold below 1219 meters (4000 feet) in elevation.

(iv) A test vehicle selected under § 85.077-5(b)(5) shall represent all vehicles of the same engine-system combination to be sold at high altitude.

9. In § 85.077-35, paragraph (a)(4) (iv) and (vi) are revised. As amended, the section reads as follows:

**§ 85.077-35 Labeling.**

(a) \* \* \*

(iv) Engine tuneup specifications and adjustments, as recommended by the manufacturer in accordance with the altitude at which the vehicle is to be sold to the ultimate purchaser, including but not limited to, idle speed, ignition timing, and the idle air-fuel mixture setting procedure and value (e.g., idle CO, idle air-fuel ratio, idle speed drop). These specifications should indicate the proper transmission position during tuneup and what accessories (e.g., air-conditioner), if any, should be in operation.

(vi) The altitude at which the vehicle is intended for sale to the public as specified by a certificate of conformity under § 85.077-30(a).

10. In § 85.077-38, paragraph (a)(3) and (4) are revised. As amended, the section reads as follows:

**§ 85.077-38 Maintenance instructions.**

(a) \* \* \*

(3) Such instructions shall indicate, for vehicles to be sold to ultimate purchasers at low altitude, what adjustments or modifications, if any, are necessary to allow the vehicle to meet emissions standards at high altitude. The maintenance instructions shall, if applicable, include a statement that the vehicle's emission control system was not designed for conversion to allow the vehicle to meet emissions standards when operated at high altitude.

(4) Such instructions shall indicate, for vehicles to be sold to ultimate purchasers at high altitude, what adjustments or modifications, if any, are necessary to allow the vehicle to meet emissions standards at low altitude. The maintenance instructions shall, if applicable, include a statement that the vehicle's emission control system was not designed for conversion to allow the vehicle to meet emissions standards when operated at low altitude.

11. In § 85.102, paragraphs (a)(24) and (25) are revised. As amended, the section reads as follows:

**§ 85.102 Definitions.**

(a) \* \* \*

(24) "High altitude" means any elevation over 1219 meters (4000 feet).

(25) "High altitude conditions" means a test altitude of 1585 meters (5200 feet), plus or minus 274 meters (900 feet), or equivalent observed barometric test conditions of 83.48 kPa (24.72 inches Hg), plus or minus 2.77 kPa (0.82 inches Hg).

**§ 85.103 [Amended]**

12. In § 85.103, the following abbreviation is added to the list of abbreviations:

kPa—Kilopascal(s).

13. In § 85.177-4, paragraph (b) is revised. As amended, the section reads as follows:

**§ 85.177-4 Required data.**

(b)(1) Emission data on such vehicles tested in accordance with the applicable test procedures of this subpart and in such numbers as therein specified, which will show their emissions after zero kilometers (zero miles), and 6436 kilometers (4000 miles) of operation.

(2) Emission data on those vehicles selected under § 85.177-5(b)(5) and tested in accordance with the applicable test procedures of this subpart and in such numbers as therein specified, which shall be tested at zero kilometers (zero miles) at any altitude, and under high altitude conditions after 6436 kilometers (4000 miles) of operation at any altitude.

14. In § 85.177-5, paragraphs (b)(5) and (6) are revised. As amended, the section reads as follows:

**§ 85.177-5 Test vehicles.**

(b) *Emission data vehicles* \* \* \*

(5) The Administrator will also select one vehicle for each engine-system combination within an engine family for which vehicles are to be sold to ultimate purchasers at high altitude.

(6) The Administrator may combine testing requirements for any vehicle selected under subparagraph (5) of this paragraph with the testing requirements for any similar vehicle in the same engine-system combination selected under subparagraphs (2), (3), or (4) of this paragraph by requiring a vehicle selected for testing under subparagraphs (2), (3), or (4) to be modified (if necessary) after mileage accumulation and emission testing for the purpose of demonstrating compliance in accordance with § 85.177-4(b)(2).

15. In § 85.177-6, paragraph (b) is revised. As amended, the section reads as follows:

**§ 85.177-6 Maintenance.**

(b)(1) Adjustment of engine idle speed on emission data vehicles may be performed once before the 6436 kilometer

(4000 mile) test point. Any other engine, emission control system, or fuel system adjustment, repair, removal, disassembly, cleaning, or replacement on emission data vehicles shall be performed only with the advance approval of the Administrator.

(2) Maintenance on emission data vehicles selected under § 85.177-5(b)(5) and permitted to be tested for purposes of § 85.177-4(b)(2) under the provisions of § 85.177-5(b)(6) may be performed in conjunction with emission control system modification at the 6436 kilometer (4000 mile) test point, and shall be performed in accordance with the maintenance instructions to be provided to the ultimate purchaser required under §§ 85.177-38(a)(3) and (4).

(3) Maintenance on those emission data vehicles selected under § 85.177-5(b)(5) which are not capable of being modified in the field for the purpose of complying with emission standards at an altitude other than intended by the original design may be performed in conjunction with the emission control system modifications at the 6436 kilometer (4000 mile) test point, and shall be approved in advance by the Administrator.

16. In § 85.177-7, paragraph (a) is revised. As amended, the section reads as follows:

**§ 85.177-7 Mileage accumulation and emissions measurement.**

(a)(1) Emission data vehicles: Each emission data vehicle shall be driven 6436 kilometers (4000 miles) with all emission control systems installed and operating. Emission tests shall be conducted at zero kilometers (zero miles) and 6436 kilometers (4000 miles).

(2) The emission data vehicle(s) selected for testing under § 85.177-5(b)(5) shall be driven 6436 kilometers (4000 miles) at any altitude. Emission tests shall be conducted at zero kilometers (zero miles) at any altitude and 6436 kilometers (4000 miles) under high altitude conditions.

(3) The emission data vehicle(s) selected for testing under § 85.177-5(b)(5) and permitted to be tested for purposes of § 85.177-4(b)(2) under the provisions of § 85.177-5(b)(6) shall be driven 6436 kilometers (4000 miles) at low altitude. Emission tests shall be conducted at zero kilometers (zero miles) at low altitude and 6436 kilometers (4000 miles) under both low and high altitude conditions. For the purpose of this subparagraph, low altitude means any elevation less than 549 meters (1800 feet).

17. In § 85.177-30 paragraphs (a)(1), (3), (4), and (5) and (b)(1)(i), (ii), and (iv) are revised. As amended, the section reads as follows:

**§ 85.177-30 Certification.**

(a)(1) If, after a review of the test reports and data submitted by the manufacturer, data derived from any inspection carried out under § 85.106(c), and any other pertinent data or in-

formation, the Administrator determines that a test vehicle(s) meets the requirements of the Act and this subpart, he will issue a certificate of conformity with respect to such vehicle(s) except in cases covered by paragraph (c) of this section. The certificate will state which vehicles are certified for sale at high altitude.

(3) A violation of section 203(a) (1) of the Clean Air Act occurs when any manufacturer sells, offers for sale, or delivers for introduction into commerce at high altitude locations any motor vehicle subject to the regulations under the Act which is not covered by a certificate of conformity issued under this subpart, unless such manufacturer has substantial reason to believe that such motor vehicle will not be sold to an ultimate purchaser for use at a high altitude location.

(4) For the purpose of paragraph (a) (3) "high altitude location" means the intended location of registration, licensing, or titling of such motor vehicle by the ultimate purchaser, such location identified by name and altitude.

(5) For the purpose of paragraph (a) (3) determination of "high altitude location" shall rest with the U.S. Geological Survey, as published in that Agency's 1:250 000 scale series of topographic maps for the United States.

(b) (1) \* \* \*

(i) A test vehicle selected under §§ 85.177-5(b) (2) or (4) shall represent all vehicles in the same engine family of the same engine displacement-exhaust emission control system-evaporative emission control system combination to be sold below 1,219 meters (4,000 feet) in elevation.

(ii) A test vehicle selected under § 85.177-5(b) (3) shall represent all vehicles in the same engine family of the same engine displacement-exhaust emission control system-transmission type-fuel system combination to be sold below 1,219 meters (4,000 feet) in elevation.

(iv) A test vehicle selected under § 85.177-5(b) (5) shall represent all vehicles of the same engine-system combination to be sold at high altitude.

18. In § 85.177-35, paragraph (a) (4) (iv) and (vi) are revised. As amended, the section reads as follows:

#### § 85.177-35 Labeling.

(a) \* \* \*

(4) \* \* \*

(iv) Engine tuneup specifications and adjustments, as recommended by the manufacturer in accordance with the altitude at which the vehicle is to be sold to the ultimate purchaser, including, but not limited to, low and high idle speeds, initial injection timing, valve lash, and aneroid adjustment, if any, as well as other parameters deemed necessary by the manufacturer. These specifications should indicate the proper transmission position during tuneup and

what accessories (e.g., air-conditioner), if any, should be in operation.

(vi) The altitude at which the vehicle is intended for sale to the public as specified by a certificate of conformity under § 85.177-30(a).

19. In § 85.177-38, paragraph (a) (3) and (4) are revised. As amended, the section reads as follows:

#### § 85.177-38 Maintenance instructions.

(a) \* \* \*

(3) Such instructions shall indicate, for vehicles to be sold to ultimate purchasers at low altitude, what adjustments or modifications, if any, are necessary to allow the vehicle to meet emissions standards at high altitude. The maintenance instructions shall, if applicable, include a statement that the vehicle's emission control system was not designed for conversion to allow the vehicle to meet emissions standards when operated at high altitude.

(4) Such instructions shall indicate, for vehicles to be sold to ultimate purchasers at high altitude, what adjustments or modifications if any, are necessary to allow the vehicle to meet emissions standards at low altitude. The maintenance instructions shall, if applicable, include a statement that the vehicle's emission control system was not designed for conversion to allow the vehicle to meet emission standards when operated at low altitude.

20. In § 85.202, paragraph (a) (29) and (30) are revised. As amended, the section reads as follows:

#### § 85.202 Definitions.

(a) \* \* \*

(29) "High altitude" means any elevation over 1219 meters (4000 feet).

(30) "High altitude conditions" means a test altitude of 1585 meters (5200 feet), plus or minus 274 meters (900 feet), or equivalent observed barometric test conditions of 83.48 kPa (24.72 inches Hg), plus or minus 2.77 kPa (0.82 inches Hg).

#### § 85.203 [Amended].

21. In § 85.203, the following abbreviation is added to the list of abbreviations:

kPa—Kilopascal(s).

22. In § 85.277-4, paragraph (b) is revised. As amended, the section reads as follows:

#### § 85.277-4 Required data.

(b) (1) Emission data on such vehicles tested in accordance with the applicable test procedures of this subpart and in such numbers as therein specified, which will show their emissions after zero kilometers (zero miles) and 6436 kilometers (4000 miles) of operation.

(2) Emission data on those vehicles selected under § 85.277-5(b) (5) and tested in accordance with the applicable test procedures of this subpart and in

such numbers as therein specified, which shall be tested at zero kilometers (zero miles) at any altitude, and under high altitude conditions after 6436 kilometers (4000 miles) of operation at any altitude.

23. In § 85.277-5, paragraph (b) (5) and (6) are revised. As amended, the section reads as follows:

#### § 85.277-5 Test vehicles.

(b) *Emission data vehicles* \* \* \*

(5) The Administrator will also select one vehicle for each engine-system combination within an engine family for which vehicles are to be sold to ultimate purchasers at high altitude.

(6) The Administrator may combine testing requirements for any vehicle selected under subparagraph (5) of this paragraph with the testing requirements for any similar vehicle in the same engine-system combination selected under subparagraph (2), (3), or (4) of this paragraph by requiring a vehicle selected for testing under subparagraph (2), (3), or (4) to be modified (if necessary) after mileage accumulation and emission testing for the purpose of demonstrating compliance in accordance with § 85.277-4 (b) (2).

24. In § 85.277-6, paragraph (b) is revised. As amended, the section reads as follows:

#### § 85.277-6 Maintenance.

(b) (1) Adjustment of engine idle speed on emission data vehicles may be performed once before the 6436 kilometer (4000 mile) test point. Any other engine, emission control system, or fuel system adjustment, repair, removal, disassembly, cleaning, or replacement on emission data vehicles shall be performed only with the advance approval of the Administrator.

(2) Maintenance on emission data vehicles selected under § 85.277-5(b) (5) and permitted to be tested for purposes of § 85.277-4(b) (2) under the provisions of § 85.277-5(b) (6), may be performed in conjunction with emission control system modifications at the 6436 kilometer (4000 mile) test point, and shall be performed in accordance with the maintenance instructions to be provided to the ultimate purchaser required under §§ 85.277-38(a) (3) and (4).

(3) Maintenance on those emission data vehicles selected under § 85.277-5(b) (5) which are not capable of being modified in the field for the purpose of complying with emission standards at an altitude other than intended by the original design may be performed in conjunction with the emission control system modifications at the 6436 kilometer (4000 mile) test point, and shall be approved in advance by the Administrator.

25. In § 85.277-7, paragraph (a) is revised. As amended, the section reads as follows:

§ 85.277-7 Mileage accumulation and emissions measurement.

(a) (1) Emission data vehicles: Each emission data vehicle shall be driven 6436 kilometers (4000 miles) with all emission control systems installed and operating. Complete exhaust emission and fuel evaporative emission tests (see § 85.277-9(a)) shall be conducted at zero kilometers (zero miles) and 6436 kilometers (4000 miles) unless the Administrator determines, based on data submitted under § 85.277-5(f), that only the exhaust emission tests (see § 85.277-9(b)) shall be conducted at zero kilometers (zero miles) and 6436 kilometers (4000 miles).

(2) The emission data vehicle(s) selected for testing under § 85.277-5(b) (5) shall be driven 6436 kilometers (4000 miles) at any altitude. Emission tests shall be conducted at zero kilometers (zero miles) at any altitude and 6436 kilometers (4000 miles) under high altitude conditions.

(3) The emission data vehicle(s) selected for testing under § 85.277-5(b) (5)

and permitted to be tested for purposes of § 85.277-4(b) (2) under the provisions of § 85.277-5(b) (6) shall be driven 6436 kilometers (4000 miles) at low altitude. Emission tests shall be conducted at zero kilometers (zero miles) at low altitude and 6436 kilometers (4000 miles) under both low and high altitude conditions. For the purpose of this subparagraph, low altitude means any elevation less than 549 meters (1800 feet).

26. In § 85.277-10, paragraph (a) is revised. As amended, the section reads as follows:

§ 85.277-10 Gasoline specifications.

(a) Fuel having the following specifications will be used by the Administrator in exhaust and evaporative emission testing. Fuels having the following specifications or substantially equivalent specifications approved by the Administrator shall be used by manufacturers in exhaust and evaporative emission testing, except that the lead and octane specification do not apply.

Item	ASTM designation	Leaded	Unleaded
Octane, research, minimum	D1656	100	98
Pb. (organic), grams/U.S. gallon		1.1	0.00-0.6
Distillation range:			
IBP, °F	D86	75-93	75-25
10 percent point, °F	D86	129-135	129-135
50 percent point, °F	D86	200-230	200-230
90 percent point, °F	D86	300-325	300-325
EP, °F (maximum)	D86	415	415
Sulphur, weight percent, maximum	D1268	0.10	0.10
Phosphorus, grams/U.S. gallon, maximum		.01	.05
RVP, °F pounds	D323	8.7-9.2	8.7-9.2
Hydrocarbon composition:			
Olefins, percent, maximum	D1319	10	10
Aromatics, percent, maximum	D1319	35	35
Saturates	D1319	Remainder	Remainder

1 Minimum.

2 For testing at altitudes above 1,219 meters (4,000 feet) the specified range is 75-105.

3 For testing which is unrelated to fuel evaporative emission control, the specified range is 8.0-9.2.

4 For testing at altitudes above 1,219 meters (4,000 feet) the specified range is 7.9-9.2.

27. In § 85.277-30, paragraphs (a) (1), (3), (4), and (5) and (b) (1) (i), (ii), and (iv) are revised. As amended, the section reads as follows:

§ 85.277-30 Certification.

(a) (1) If, after a review of the test reports and data submitted by the manufacturer, data derived from any inspection carried out under § 85.206(c), and any other pertinent data or information, the Administrator determines that a test vehicle(s) meets the requirements of the Act and this subpart, he will issue a certificate of conformity with respect to such vehicle(s) except in cases covered by paragraph (c) of this section. The certificate will state which vehicles are certified for sale at high altitude.

(3) A violation of section 203(a) (1) of the Clean Air Act occurs when any manufacturer sells, offers for sale, or delivers for introduction into commerce at high altitude locations any motor vehicle subject to the regulations under the Act

which is not covered by a certificate of conformity issued under this subpart, unless such manufacturer has substantial reason to believe that such motor vehicle will not be sold to an ultimate purchaser for use at a high altitude location.

(4) For the purpose of paragraph (a) (3) "high altitude location" means the intended location of registration, licensing, or titling, of such motor vehicle by the ultimate purchaser, such location identified by name and altitude.

(5) For the purpose of paragraph (a) (3) determination of "high altitude location" shall rest with the U.S. Geological Survey, as published in that Agency's 1:250 000 scale series of topographic maps for the United States.

(b) (1) . . .

(i) A test vehicle selected under §§ 85.277-5(b) (2) or (4) shall represent all vehicles in the same engine family of the same engine displacement-exhaust emission control system-evaporative emission control system combination to be sold below 1219 meters (4000 feet) in elevation.

(ii) A test vehicle selected under § 85.277-5(b) (3) shall represent all vehicles in the same engine family of the same engine displacement-exhaust emission control system-transmission type-fuel system combination to be sold below 1219 meters (4000 feet) in elevation.

(iv) A test vehicle selected under § 85.277-5(b) (5) shall represent all vehicles of the same engine-system combination to be sold at high altitude.

28. In § 85.277-35, paragraph (a) (4) (iv) and (vi) are revised. As amended, the section reads as follows:

§ 85.277-35 Labeling.

(a) . . .  
(4) . . .

(iv) Engine tuneup specifications and adjustments, as recommended by the manufacturer in accordance with the altitude at which the vehicle is to be sold to the ultimate purchaser, including, but not limited to, idle speed, ignition timing, and the idle air-fuel mixture setting procedure and value (e.g., idle CO, idle air-fuel ratio, idle speed drop). These specifications should indicate the proper transmission position during tuneup and what accessories (e.g., air-conditioner), if any, should be in operation.

(vi) The altitude at which the vehicle is intended for sale to the public as specified by a certificate of conformity under § 85.277-30(a).

29. In § 85.277-38, paragraph (a) (3) and (4) are revised. As amended, the section reads as follows:

§ 85.277-38 Maintenance instructions.

(a) . . .

(3) Such instructions shall indicate, for vehicles to be sold to ultimate purchasers at low altitude, what adjustments or modifications, if any, are necessary to allow the vehicle to meet emissions standards at high altitude. The maintenance instructions shall, if applicable, include a statement that the vehicle's emission control system was not designed for conversion to allow the vehicle to meet emissions standards when operated at high altitude.

(4) Such instructions shall indicate, for vehicles to be sold to ultimate purchasers at high altitude, what adjustments or modifications if any, are necessary to allow the vehicle to meet emissions standards at low altitude. The maintenance instructions shall, if applicable include a statement that the vehicle's emission control system was not designed for conversion to allow the vehicle to meet emissions standards when operated at low altitude.

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**PART III**



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## **DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE**

**Public Health Service**

■

**HEALTH MAINTENANCE  
ORGANIZATIONS**

## Title 42—Public Health

CHAPTER I—PUBLIC HEALTH SERVICE,  
DEPARTMENT OF HEALTH, EDUCATION,  
AND WELFARESUBCHAPTER J—HEALTH CARE DELIVERY  
SYSTEMSPART 110—HEALTH MAINTENANCE  
ORGANIZATIONS

On May 8, 1974, there was published in the FEDERAL REGISTER (39 FR 16422-16432) a notice of proposed rulemaking regarding the implementation of certain of the provisions of the Health Maintenance Organization Act of 1973, Pub. L. 93-222, 42 U.S.C. 300e et seq. Interested persons were given until June 7, 1974, to submit written comments or suggestions thereon. A total of 141 comments were received on or before June 7, 1974, and an additional 353 comments were received after that date. All comments received were considered in revising these regulations.

Comments suggesting changes in requirements which are mandated by statute were rejected. Comments requesting greater specificity were incorporated in the regulations wherever appropriate. In addition to changes made in response to public comment, a number of editorial changes have also been made to simplify and clarify the regulations, as well as to eliminate duplication.

The comments received, responses thereto, and the changes in the proposed regulations are summarized below.

**Subpart A. 1.** In response to a comment, the definition of a health maintenance organization (HMO) (§ 110.101 (a)) was amended to include "or arranges for the provision of" basic and supplemental health services. This addition maintains the responsibility of the HMO for provision of the services, but provides for flexibility of organization. Thus, an HMO may arrange for the provision of inpatient services without providing them through an HMO-owned hospital.

A suggestion to consider an HMO operating in more than one geographic region as being a distinct HMO in each region but operating under a single policy-making board was rejected as inconsistent with the statute. While a single organization may clearly operate separate regional components (§ 110.101 (1)(3)), that single organization must meet the requirement for member representation on its Board of Directors (§ 110.106(h)).

2. A question was raised whether the term "physician" includes both doctors of medicine and doctors of osteopathy. To clarify the use of this term, physician has been defined as meaning doctors of medicine and doctors of osteopathy (§ 110.101(h)(2)).

3. The basic health service "inpatient and outpatient hospital services" (§ 110.101(b)(2)) includes outpatient services not provided in a hospital. This term has been revised for clarity as "outpatient services and inpatient hospital services."

4. The basic health service "medically necessary emergency health services" (§ 110.101(b)(3)) was clarified to read

"medically necessary outpatient and inpatient emergency health services."

5. Definitions of "in-area" and "out-of-area" were added to clarify the responsibilities of the health maintenance organization for the provision of and payment for health services.

6. In accordance with a suggestion, the definition of "member" was clarified to refer to an enrollee of an HMO as opposed to a member of a medical group or individual practice association (I.P.A.). In response to several suggestions, a new term "subscriber" was introduced (§ 110.101(g)) to describe the member who enters into a contract with the HMO. A suggestion to require active voluntary enrollment by subscribers was rejected as being more properly dealt with in regulations to be published implementing section 1310 of the Act ("Employees Health Benefits Plans").

7. Many suggestions were received regarding the need for a revised and expanded definition of "health professional." Former § 110.105(c) has been revised accordingly and placed in the definition section as § 110.101(h).

8. Many questions, comments, and suggestions were received regarding the requirements for a medical group (§ 110.101(i)). The omission of "corporation" in the definition was cited, and the term was added to avoid excluding this form of entity. The suggestion to permit a longer phase-in period for requiring that the group's principal professional activity be the provision of service to HMO enrollees was rejected as being inconsistent with the intent of the HMO Act, as was the suggestion that this requirement apply only to primary care physicians. The "principal (over 50 percent) professional activity" refers to the activity of the medical group in the aggregate, as opposed to the activity of the individual members of such group, and was so clarified.

9. The sharing of records by the medical groups and the I.P.A. has been clarified in accordance with a suggestion, as referring to "health (including medical) records" (§ 110.101 (i) and (j)).

10. The written services agreement section for both the medical group and the I.P.A. have been moved to § 110.104 from their previous placement in § 110.105(2)(b). Comments were received both in support of and against the requirements for risk sharing; the requirements were not changed. The term "profit sharing" was cited as inappropriate for non-profit entities; it was changed to "effective incentives."

11. Many comments were received regarding nominal differentials permitted under community rating (§ 110.101(1)). Suggestions to change the term "members" to "subscribers" in differentiating between small groups and large groups were accepted. Suggestions to delete Secretarial approval of differentials as not required by the Act, were accepted. Suggestions concerning rates antithetical to the requirement for community rating, were rejected as inconsistent with the statute. A statement permitted changes in rates established for new en-

rollments or re-enrollments and not applicable to existing contracts until their renewal was added in response to a request to assure that subscribers can be guaranteed the same rate through their contract period.

12. A new term "qualified HMO" was added to refer to an entity which has been found by the Secretary to meet the applicable requirements or Title XIII of the Public Health Service Act and the applicable regulations of this part.

13. The section "Delivery of health services" (formerly § 110.102) was deleted, except that § 110.102(b) was expanded and moved to § 110.109 (Special requirements: Titles XVIII and XIX of the Social Security Act) in response to a suggestion that it was vague and difficult to understand.

14. The new § 110.102 (formerly § 110.108) describes the health benefits plan: Basic health services. Major changes in § 110.102(a) include:

(a) Inpatient hospital services were more fully defined.

(b) Repetitive sections on medically necessary emergency services were deleted.

(c) The requirement that qualified mental health professionals direct the provision of mental health services has been deleted as inappropriate for regulation. At least twenty outpatient mental health visits must be offered; the time frame has been changed from a "calendar year" to a "year" since some HMOs use a "contract year" or a "benefit year." Many comments were received stating that the promotion of use of community mental health centers for basic health services is inconsistent with both the centers for basic health services is inconsistent with both the concept and the organizational structure of an HMO. Others suggested changing "should" to "may" regarding the requirement for providing services through such centers. This requirement was therefore deleted, as were the requirements regarding hours of service.

(d) In response to request for more detail, a revised and expanded section on services for the abuse of or addiction to alcohol and drugs includes the requirement for detoxification services, and referral to both medical services and non-medical ancillary services. The reference to screening was deleted in response to several comments pointing out that it is not required by the Act.

(e) The requirement that, where feasible, home health services be provided under the auspices of local home health agencies was deleted in response to several comments. It is agreed that it may be more feasible and appropriate for the HMO to provide such services in some cases.

(f) A very large volume of comments was received regarding the phrase "as medically indicated and in accord with acceptable medical practice" following "eye examinations for children through age 11." Since this appears to limit the scope of eye care for children which could be provided effectively by optometrists, the phrase was deleted. Fur-

ther, since major physical changes in the parameters of vision occur during the period age 12 through 17, the limit has been raised to age 17 to make the provision of this service more meaningful and to achieve the intent of the statute.

15. There were many comments on the listed exclusions from the basic health services (renumbered § 110.102(b)), including suggestions to expand the list so as to exclude blood and blood plasma since these are neither physician nor hospital services; personal comfort items during hospitalization; and experimental medical, surgical and other experimental health care procedures unless approved as a basic service by the policy-making body of the HMO. These were added to the list of exclusions, as was custodial or domiciliary care. A suggestion that an HMO be allowed to exclude from basic health services, services for which members are covered under any form of service or insurance arrangement, and to provide a credit reflecting such other coverage, was rejected as inconsistent with the statutory requirement that an HMO provide or arrange for all the basic health services. Also inconsistent was a suggestion that an HMO be allowed to exclude a basic service, if such service violates the beliefs or standards of the provider group. The exclusion, "provision of prescribed drugs and medicines" was clarified to indicate that only drugs and medicines "incidental to outpatient care" may be excluded; drugs and medicines for inpatient care are part of the basic inpatient hospital services. The exclusion "inpatient benefits for the specific spell of illness for which a member is hospitalized on the effective date of his coverage and for which the member is covered under any form of service or insurance arrangement" was deleted. In response to suggestions, all references to coordination of benefits from third party payers except for workmen's compensation or employer's liability law or other legislation of similar purpose or impact were deleted from the regulations. An HMO is free to pursue such a policy if it wishes. Comments referred to the inability of an HMO to identify other payment sources in every case, since they are not always reported, and to the fact that some members observe the requirements and others pay only on compulsion. Also, in tort judgments and settlements, it is often not possible to determine the portion of settlements allocable to medical costs.

16. Supplemental health services (§ 110.103) were amended in response to a suggestion to clarify that the level and scope of services to be provided are determined by the HMO, taking into account the availability of the required health manpower. The supplemental benefit for prescription drugs was clarified to indicate that these are drugs "prescribed in the course of the provision of basic outpatient or supplemental health services." In response to several suggestions, the drug use profile language was modified to emphasize the voluntary aspect of such an activity and to broaden

the base of such program to include all health professionals of the HMO.

17. Section 110.104, "Providers of services," was revised for clarity and contains several new references. As revised, the section now permits three exceptions to the requirement that basic health services be provided or arranged for through health professionals who are members of the staff of the HMO or through medical groups or I.P.A.s. In addition to authorizing alternate arrangements for the provision of unusual or infrequently used services or of medically necessary emergency services (not solely for the convenience of members), this section, in response to a suggestion, recognizes that inpatient hospital services will be provided by employees or staff of the hospital. In addition, to the extent that basic services are not covered under a written services agreement with a medical group or I.P.A., the HMO may arrange for the provision of such services by other health professionals as members of its staff who are either directly employed or appointed to its staff through a contract for services. This exception responds to many comments referring to State laws which prohibit a medical group from including other health professionals. Several comments were received regarding the term "medically necessary;" some urged that it be limited to emergencies in order to allow the HMO to maintain the maximum quality and cost control, while others urged that it not be so limited in order to permit greater use of allowable reinsurance. The regulations clarify that medically necessary services are such services required in an emergency situation. The potential use of federally funded projects, such as community mental health centers, to provide health services will be addressed in guidelines elaborating upon these regulations.

18. Section 110.104(b) responds to suggestions that reimbursements to other providers for the provision of medically necessary emergency services need be only for reasonable charges for such services. Also, in response to objections that physicians be required to determine medical necessity, the "designation of a physician" phrase was deleted.

19. Section 110.104(c) clarifies that supplemental health services need not be provided in the same manner as basic health services, that is, through staff of the HMO, a medical group, or I.P.A.

20. A large number of comments were received regarding copayments which may be required for the provision of specific basic health services. Section 110.105 (Payment for basic health services) has been revised as follows. The multiple copayment option was cited as administratively burdensome and was deleted. In recognition of the potential administrative problems in determining when an individual or family has met the copayment limitation, the phrase "If such subscriber or member demonstrates copayments in that amount have been paid in such year" has been added. The suggestion to delete the limitation on copayments when they total 50 percent of the

subscriber's or member's annual prepayment amount has been rejected. The limitation on copayments is placed so as to be more closely tied to assuring that copayments are not a barrier to care.

21. A new paragraph, § 110.105(b), has been added in response to a suggestion that the HMO should not be required, but should be authorized, to seek reimbursements for basic health services it will provide which are covered by workmen's compensation or employer's liability laws or other legislation of similar purpose or impact. A similar paragraph, § 110.106(c), has been added to apply to payment for supplemental services.

22. Several editorial changes were made in the section on availability, accessibility, and continuity of basic and supplemental health services, (§ 110.107). In paragraph (a), "promptly" is now modified by "as appropriate," in accordance with the statute and public comment. Paragraph (b) (2) requires a "health professional," instead of "physician," to "coordinate," instead of "provide for and oversee," the patient's health care, as suggested. These changes are to insure continuity of a member's health care by an HMO health professional. Paragraph (b) (1) clarifies the requirement that medically necessary emergency health services be available and accessible 24 hours a day.

23. Several changes were made in the Section on organization and operation, (§ 110.108). Comments asked for a more specific definition of fiscal solvency; paragraph (a) is expanded accordingly. Paragraph (c) includes two new suggested requirements for full and fair disclosure: Grievance procedures and a general description of participating providers. Because of the voluntary nature of enrollment, the language reads "offer enrollment" instead of "enroll" in that paragraph. The former provisions relating to Medicaid and Medicare enrollment are now contained in a new § 110.109. The suggestion that colleges and universities limit enrollment to students and faculty and be considered broadly representative of that community was rejected as in violation of the statute.

24. Section 110.108(d) on open enrollment has been expanded to give examples of jeopardizing economic viability and to indicate what documentation must be submitted to support a waiver request. It was pointed out that paragraph (4) would require conditions jeopardizing economic viability to occur prior to the granting of a waiver; this requirement was deleted.

25. Section 110.108(f) has been amended by adding the requirement that individual members of a group may not be refused enrollment because of health status.

26. In response to the suggestion that the regulations require conversion of benefits coverage, § 110.108(g) has been added to require that each HMO shall offer each subscriber leaving a group a membership agreement on the same terms and conditions as are available to a non-group subscriber.

27. Several comments were received regarding the requirements for member representation on the HMO policy board. It was suggested that six months were not long enough for a newly operational HMO to include representative members on the Board, since there could be a limited membership to draw from at that time. The regulations were changed and now require member representation within one year after the HMO is operational as a qualified HMO. It was pointed out that the reference to "the Board of Directors or other policy-making body" was "too vague." The revised language refers to the "Board of Directors of the HMO or in the absence of such, its equivalent policy-making body." Several comments were received on the requirement for representation from medically underserved populations. It was pointed out that the draft regulation was inequitable by requiring representation from a medically underserved population, regardless of its enrollment relative to the total enrollment. New language requires that if at least 5 percent of total membership is from medically underserved populations, such population shall not be without representation. It was also suggested that regulations allow members serving on the Board of Directors to receive "payment of interest on bonds" without a conflict of interest under the regulations; such a provision was added to § 110.108(h)(1).

28. A suggestion that the grievance procedures provided for in § 110.108(h)(2) cannot supersede provisions of Titles XVIII and XIX of the Social Security Act for members enrolled through such Titles is incorporated into § 110.109(d).

29. Several suggestions were received urging deletion of § 110.108(i)(4), which requires an HMO to provide for a quality assurance program which is designed in such a manner as will be likely to meet the standards for services provided by hospitals and other operating health care facilities pursuant to section 1155 (e) of the Social Security Act; i.e., Professional Standards Review. Reasons included the fact that these provisions do not apply to non-hospital based HMOs. It was also suggested that such a provision could result in unwarranted interference by a PSRO in the internal affairs of a prepaid group practice. To the extent that the HMO provides services for which payment may be made under the Social Security Act, it is, of course, subject to review under section 1155(e). Beyond this, however, is the need to assure that suitable procedures are applied to HMO services to assure that they conform to appropriate professional standards for the provision of health care applicable to other providers. Thus, other than for editorial changes, this provision remains unchanged.

30. Section 110.108(k) was amended to require that providers through which the HMO provides basic and supplemental services not only meet Medicare and Medicaid requirements for certification, but also be certified. Clinical laboratories which are subject to licensure under the Clinical Laboratories Improvement Act

(section 353, PHS Act) must also be so licensed.

31. Health education and medical social services were placed under requirements for organization and operation of an HMO, as in the Act, rather than listed as basic health services. In response to several requests for recognition of the role of nutrition in health maintenance, § 110.108(m)(4) has been added, requiring both nutritional education and counseling. As requested by several reviewers, a definition of medical social services has been added (§ 110.108(n)).

32. Several comments were received suggesting the deletion of the phrase in § 110.108(o)(2) requiring the HMO to develop, compile, evaluate, and report data on the effects on utilization of the requirements, if any, for copayment. The reason cited in all cases was the inability for an HMO to measure, in a meaningful way, the difference in utilization patterns as a function of copayment. These points are well taken and this requirement was deleted.

33. Many comments were received relative to the inclusion of nurses in the planning and delivery of health services. Where consistent with the Act, the role of nurses has been clarified.

Although the Act provides for financial assistance through grants, contracts, loans and loan guarantees, the regulations in Subparts B-E pertain as appropriate to grants, loans and loan guarantees. The awarding of contracts is not contemplated at this time; consequently, the word "contract(s)" has been deleted throughout these regulations.

Subpart B. 1. Comments finding the definition of significant expansion in § 110.202(c) too restrictive were taken into account, and substantial modification was made in the definition and in other applicable sections throughout these regulations. Language was added to clarify that eligibility for expansion assistance is limited to qualified health maintenance organizations.

2. In accordance with suggestions that the requirement of written verification from two public or private lending agencies for the grant applicant's financial statement be limited to a requirement only for operational health maintenance organizations, the language of § 110.203(d) was so modified. Other clarifying modifications were also made in this section.

3. Section 110.203(e) was significantly revised to define more clearly the assurances required from applicants seeking financial assistance under the Act. In addition, in § 110.204(e)(4), as suggested by public comments concerning the phrase "enroll and maintain the maximum of members," clarifying language was substituted.

4. Section 110.101(g) of Subpart A, "medically underserved population" was moved to Subpart B, § 110.203(g), as the more logical place for applicants to find such needed information. In addition, the basis for the 4 factors which will be taken into consideration in the Secretary's determination of a medically underserved area was expanded and

clarified. This provision was clarified to indicate that the appropriate 314 health planning agency would have an opportunity to comment prior to the Secretary's designation of medically underserved population groups.

5. In response to many comments, the review and comment period for appropriate 314 agency was extended to 60 days from 40 days (§ 110.203(h)). Language was also added requiring applicants to provide information describing projects for the planning or operation of health delivery programs supported under other titles of the PHS Act or for which applications are currently under consideration.

6. Proposals that the contents of applications or the kinds of applications that must be sent to the 314 agency for review and comment should be more limited and circumscribed were rejected as inconsistent with section 1306 of the Act, which specifies that all applications for Federal financial assistance be submitted for review and comment by the appropriate 314 agency.

7. Appropriate language elaborating upon the Secretary's rights to data developed or resulting from a project supported under Part 110 was incorporated into § 110.209.

8. The word "award" was substituted for "grant" in § 110.208 and § 110.211 in order to clarify that these regulations also apply to recipients of loans and loan guarantees under the Act.

Subpart C. 1. The phrase "proposed service area" was added to § 110.303(a)(3) and, as appropriate, elsewhere in these regulations, as a significant project element which must be addressed by applicants for financial assistance.

2. Some comments questioned the need to notify the local medical societies of the applicant's intent to apply for assistance and the need to provide evidence of support and acceptance by the community for the proposed HMO (§ 110.303(c) and (d)). These requirements were maintained, since their deletion or modification would be inconsistent with section 1306 of the Act.

3. (a) Clarifying changes were made in other parts of § 110.303 to elucidate the project elements applicants must speak to in their applications for assistance.

(b) Changes were made in § 110.303(f) of this Subpart and correspondingly in § 110.403(g) of Subpart D to clarify the eligibility for Federal financial assistance of existing organizations operating on a prepaid capitation basis.

(c) In § 110.303(e) of this Subpart and § 110.404(b) of Subpart D, language was added in response to public comment which recognizes that applicants may include in their applications, in addition to information about required activities, other activities where circumstances indicate that it would be appropriate and consistent with the intent of the Act to propose such activities.

4. (a) The suggestion that the phrase "to reduce inappropriate hospitalization" be substituted for "to reduce hospitalization" in § 110.304(a)(3) was incorporated in this and subsequent subparts.

The substituted language was judged to be more consistent with the intent of the Act.

(b) In addition, in response to suggestions received, § 110.304(a) (3) was also changed to read "health care costs" in lieu of "medical costs", and the phrase "medical and other health manpower" was substituted for "allied health manpower." Corresponding changes were made in appropriate sections of Subparts D and E.

(c) A comment expressed concern that new § 110.304(a) (4) might be discriminatory against certain applicants. This provision is required by section 1306(b) (3) (i) of the Act and will be administered in a non-discriminatory manner.

5. Language was added to § 110.305 of this subpart and to corresponding § 110.405 of Subpart D and § 110.505 of Subpart E, which permits applicants to propose an award performance period of 12 months or less as appropriate to individual circumstances.

**Subpart D. 1.** Suggestions were received which requested clarification of projects elements for planning as stated in § 110.403 and proposed that additional elements be included. As appropriate, such clarifying modifications were made. These included substitute language for § 110.403(f) (10), which now reads "Identify providers of basic health services and develop preliminary agreements to negotiate with these providers"; in lieu of "Develop preliminary physician service agreements." Project elements were expanded to 11 specified planning stage activities under § 110.403(f), and "Plan for necessary facilities and equipment" was added. Among the suggested additions to this section were items which are more appropriate for discussion in the guidelines than for regulations; these will be included in the guidelines.

2. In § 110.404(c), the suggested substitute phrase "provide hospital services to members" for "admit enrollees" was incorporated.

3. Rejected for inclusion in § 110.404 (d) was suggested language that would mandate that State Medicaid agencies negotiate contracts with HMOs. Neither Medicaid participation nor Medicare enrollment can be mandated by these regulations.

4. The view was expressed that initial development projects serving medically underserved areas be permitted to purchase land and construct and renovate facilities with award funds. This suggestion was rejected since the Act does not include authority to support such costs.

5. The loan guarantee provisions in § 110.407 of Subpart D and the loan provision in § 110.508 of Subpart E, pertaining to repayment, were modified by the addition of the sentence "Principal repayment during the first 36 months of operation may be deferred, with payment of interest only, by the applicant during such period." This change is responsive to public suggestion.

**Subpart E. 1.** Clarification was requested on the phrase "breakeven point" included in § 110.505. Since guidelines will

define in detail the financial plan and describe more fully for applicants other required activities, a fuller explanation of "breakeven point" will also be included in the guidelines.

2. A commenter objected to § 110.507 (b) claiming that it would limit loans or loan guarantees under section 1305 of the Act to two-thirds of projected operating deficits. However, in light of the provision in this paragraph authorizing the Secretary to approve a higher level of support, it was felt that the two-thirds limit was not restrictive in all cases, but would serve as a statement of the level of support which can be expected in normal circumstances. Section 110.507 (b) therefore was left unchanged.

A number of minor editorial changes were made, and a number of typographical errors were corrected.

There is hereby established in Chapter I of Title 42, CFR, a new Subchapter J, "Health Care Delivery Systems", and within such Subchapter J, a new Part 110, "Health Maintenance Organizations", as follows:

**Effective date.** These regulations shall be effective on October 18, 1974.

Dated: September 11, 1974.

CHARLES C. EDWARDS,  
Assistant Secretary for Health.

Approved: October 9, 1974.

CASPAR W. WEINBERGER,  
Secretary.

**Subpart A—Requirements for a Health Maintenance Organization**

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**Subpart D—Grants and Loan Guarantees for Planning and for Initial Development Costs**

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| 110.402 | Eligibility.                              |
| 110.403 | Project elements for planning.            |
| 110.404 | Project elements for initial development. |
| 110.405 | Funding duration and limitation.          |
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**Subpart E—Loans and Loan Guarantees for Initial Operating Costs**

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| 110.501 | Applicability.                   |
| 110.502 | Definitions.                     |
| 110.503 | Eligibility.                     |
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| 110.505 | Reserve requirements.            |
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| 110.507 | Funding duration and limitation. |
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**Subpart F—Qualification of Health Maintenance Organizations [Reserved]**

**Subpart G—Restrictive State Laws and Practices**

- |         |                                 |
|---------|---------------------------------|
| 110.701 | Restrictive laws and practices. |
|---------|---------------------------------|

**Subpart H—Employees' Health Benefit Plans [Reserved]**

**Subpart I—Continued Regulation of Health Maintenance Organizations [Reserved]**

**AUTHORITY:** Sec. 215, 58 Stat. 690, 42 U.S.C. 210; secs. 1301-1315, 87 Stat. 914-933 (42 U.S.C. 300a-300a-14).

**Subpart A—Requirements for a Health Maintenance Organization**

**§ 110.101 Definitions.**

As used in this part:

(a) "Health maintenance organization" means a legal entity which provides or arranges for the provision of basic and supplemental health services to its members in the manner prescribed by, is organized and operated in the manner prescribed by, and otherwise meets the requirements of, section 1301 of the Act and the regulations under this subpart.

(b) "Basic health services" means:

(1) Physicians services (including consultant and referral services by a physician);

(2) Outpatient services and inpatient hospital services;

(3) Medically necessary outpatient and inpatient emergency health services;

(4) Short-term (not to exceed twenty visits), outpatient evaluative and crisis intervention mental health services;

(5) Medical treatment and referral services (including referral services to appropriate ancillary services) for the abuse of or addiction to alcohol and drugs;

(6) Diagnostic laboratory and diagnostic and therapeutic radiologic services;

(7) Home health services; and

(8) Preventive health services (including voluntary family planning services, services for infertility, preventive dental care for children, and children's eye examinations conducted to determine the need for vision correction).

(c) "Supplemental health services" means:

(1) Services of facilities for intermediate and long-term care;

(2) Vision care not included as a basic health service;

(3) Dental services not included as a basic health service;

(4) Mental health services not included as a basic health service;

(5) Long-term physical medicine and rehabilitative services (including physical therapy); and

(6) The provision of prescription drugs prescribed in the delivery of a basic health service or a supplemental health service provided by the health maintenance organization.

(d) "In-area" means the geographical area defined by the health maintenance organization as its service area in which it provides health services to its members, directly through its own resources or through arrangements with other providers in the area.

(e) "Out-of-area" means that area outside of the geographical area defined by the health maintenance organization as its service area.

(f) "Member", when used in connection with a health maintenance organization, means an individual who has entered into a contractual arrangement, or on whose behalf a contractual arrangement has been entered into, with the organization under which the organization assumes the responsibility for the provision to such individual of basic health services and of such supplemental health services as may be contracted for.

(g) "Subscriber" means a member who has entered into a contractual relationship with the health maintenance organization.

(h) (1) "Health professionals" means physicians, dentists, nurses, podiatrists, optometrists, physicians assistants, clinical psychologists, social workers, pharmacists, nutritionists, occupational therapists, physical therapists and other professionals engaged in the delivery of health services who are licensed, practice under an institutional license, are certified, or practice under authority of the health maintenance organization, a medical group, individual practice association or other authority consistent with State law.

(2) "Physician" means a doctor of medicine or a doctor of osteopathy.

(i) "Medical group" means a partnership, association, corporation, or other entity:

(1) Which is composed of health professionals licensed to practice medicine or osteopathy and of such other licensed health professionals (including dentists, optometrists, and podiatrists) as are necessary for the provision of health services for which the group is responsible;

(2) A majority of the members of which are licensed to practice medicine or osteopathy; and

(3) The members of which

(i) As their principal (over 50 percent in the aggregate) professional activity and as a group responsibility engage in the coordinated practice of their profession for a health maintenance organization or present a time phased plan, which is acceptable to the Secretary and to which they are committed, to meet this requirement within 3 years from the date the health maintenance organiza-

tion is found by the Secretary to be a qualified health maintenance organization;

(ii) Pool their income from practice as members of the group and distribute it among themselves according to a pre-arranged salary or drawing account or other plan;

(iii) Share health (including medical) records and substantial portions of major equipment and of professional, technical, and administrative staff;

(iv) Utilize such additional professional personnel, allied health professions personnel, and other health personnel as are available and appropriate for the effective and efficient delivery of the services of the members of the group; and

(v) Arrange for and encourage continuing education in the field of clinical medicine and related areas for the members of the group; and

(4) Which has a written services agreement with a health maintenance organization to provide services to members of the health maintenance organization.

(j) "Individual practice association" means a partnership, corporation, association, or other entity: (1) Which has as its primary objective the delivery or arrangements for the delivery of health services and which has entered into a written service arrangement or arrangements with health professionals, a majority of whom are licensed to practice medicine or osteopathy. Such written services arrangement shall provide:

(i) That such persons shall provide their professional services in accordance with a compensation arrangement established by the entity; and

(ii) To the extent feasible

(A) That such persons shall utilize such additional professional personnel, allied health professions personnel, and other health personnel as are available and appropriate for the effective and efficient delivery of the services of the persons who are parties to the arrangement;

(B) For the sharing by such persons of health (including medical) and other records, equipment, and professional, technical, and administrative staff; and

(C) For the arrangement and encouragement of the continuing education of such persons in the field of clinical medicine and related areas; and

(2) Which has a written services agreement with a health maintenance organization to arrange for the provision of services to members of the health maintenance organization.

(k) "Medically underserved population" means the population of an urban or rural area designated by the Secretary as an area with a shortage of personal health services. Designations with respect to such urban or rural areas will be made by the Secretary as described in § 110.203(g).

(l) "Community rating system" (community rate) means a system of fixing rates of payments for health services. Under such a system rates of payments may be determined on a per-person or per-family basis and may vary with the number of persons in a family, but ex-

cept as otherwise authorized in this paragraph, such rates must be equivalent for all individuals and for all families of similar composition. This does not preclude changes in the rates of payments for health services based on a community rating system which are established for new enrollments or re-enrollments and which changes do not apply to existing contracts until the renewal of such contracts. Only the following differentials in rates of payments may be established under such system:

(1) Nominal differentials in such rates may be established to reflect the different administrative costs of collecting payments from the following categories of subscribers:

(i) Individual (non-group) subscribers (including their families),

(ii) Small groups of subscribers (100 subscribers or less),

(iii) Large groups of subscribers (over 100 subscribers).

(2) Differentials in such rates may be established for subscribers enrolled in a health maintenance organization: (i) Under a contract with a governmental authority under section 1079 ("Contracts for Medical Care for Spouses and Children: Plans") or section 1086 ("Contracts for Health Benefits for Certain Members, Former Members and their Dependents") of Title 10 ("Armed Forces"), United States Code; or (ii) Under any other governmental program (other than the health benefits program authorized by chapter 89 ("Health Insurance"), of Title 5 ("Government Organization and Employees"), United States Code); or (iii) Under any health benefits program for employees of States, political subdivisions of States, and other public entities.

(3) A health maintenance organization may establish a separate community rate for separate regional components of the organization upon satisfactory demonstration to the Secretary of the following:

(i) Each such regional component is geographically distinct and separate from any other regional component;

(ii) Membership is established with respect to the individual regional component, rather than with respect to the parent health maintenance organization; and

(iii) Each such regional component provides substantially the full range of basic health services to its members, without extensive referral between components of the organization for such services, and without substantial utilization by any two such components of the same health care facilities. The separate community rate for each such regional component of the health maintenance organization must be based on the different costs of providing health services in such regions.

(m) "Nonmetropolitan area" means an area no part of which is within an area designated as a standard metropolitan statistical area by the Office of Management and Budget and which does not contain a city whose population exceeds fifty thousand individuals.

(n) "Rural area" means any area not listed as a place having a population of 2,500 or more in Document #PC(1)-A, "Number of Inhabitants", Table VI, "Population of Places", and not listed as an urbanized area in Table XI, "Population of Urbanized Areas" of the same document (1970 Census, Bureau of the Census, U.S. Department of Commerce).

(o) "Non-Federal lender" means any lender other than an agency or instrumentality of the United States.

(p) "Act" means the Public Health Service Act.

(q) "Secretary" means the Secretary of Health, Education, and Welfare and any other officer or employee of the Department of Health, Education, and Welfare to whom the authority involved has been delegated.

(r) "Qualified health maintenance organization" means an entity which has been found by the Secretary to meet the applicable requirements of title XIII of the Act and the applicable regulations of this Part.

**§ 110.102 Health benefits plan; basic health services.**

A health maintenance organization shall:

(a) Provide or arrange for the provision of basic health services to its members as needed and without limitations as to time and cost other than those prescribed in the Act and these regulations, as follows:

(1) Physician services (including consultant and referral services by a physician), which shall be provided by a licensed physician, or if a service of a physician may also be provided under applicable State law by other health professionals, a health maintenance organization may provide such service through such other health professionals;

(2) Outpatient services, which shall include diagnostic or treatment services or both for patients who are ambulatory and may be provided in a nonhospital-based health care facility or at a hospital; inpatient hospital services, which shall include, but not be limited to, room and board, general nursing care, meals and special diets when medically necessary, use of operating room and related facilities, intensive care unit and services, X-ray, laboratory and other diagnostic tests, drugs, medications, biologicals, anesthesia and oxygen services, special duty nursing when medically necessary, physical therapy, radiation therapy, inhalation therapy, and administration of whole blood and blood plasma; outpatient services and inpatient hospital services shall include short-term rehabilitation services as appropriate;

(3) Instructions to its members on procedures to be followed to secure in-area and out-of-area medically necessary emergency health services (see § 110.104 (a) (2));

(4) At least 20 outpatient visits per member per year, as may be necessary and appropriate, for short-term evaluative or crisis intervention mental health services, or both;

(5) Diagnosis, medical treatment and referral services (including referral serv-

ices to appropriate ancillary services) for the abuse of or addiction to alcohol and drugs;

(1) Diagnosis and medical treatment shall include detoxification for alcoholism or drug abuse on either an outpatient or inpatient basis, whichever is medically determined to be appropriate, in addition to treatment for other medical conditions;

(11) Referral services may be either for medical or for nonmedical ancillary services. Medical services shall be a part of basic health services; non-medical ancillary services (such as vocational rehabilitation; employment counseling), need not be a part of basic health services;

(6) Diagnostic laboratory and diagnostic and therapeutic radiology services in support of basic health services;

(7) Home health services provided at a member's home by health care personnel, as prescribed or directed by the responsible physician or other authority designated by the health maintenance organization; and

(8) Preventive health services, which shall be made available to members and shall include at least the following:

(1) A broad range of voluntary family planning services;

(11) Services for infertility;

(111) Preventive dental care to protect and maintain the dental health of children through age 11 provided by a licensed dentist or other qualified personnel. Preventive dental care shall include:

(A) Oral prophylaxis, as necessary, and

(B) Topical application of fluorides, and the prescription of fluorides for systemic use when not available in the community water supply;

(iv) Eye examinations for children through age 17, to determine the need for vision correction; and

(v) Pediatric and adult immunizations, in accord with accepted medical practice.

(9) Medical social services.

(10) Health education services and education in the appropriate use of health services and in the contribution each member can make to the maintenance of his own health. A health maintenance organization shall provide its members with (i) instruction in personal health care measures, and (ii) information about its services including recommendations on generally accepted medical standards for use and frequency of such services.

(b) The following are not required to be provided as basic health services:

(1) Corrective appliances and artificial aids;

(2) Mental health services, except as required under section 1302(1) (D) of the Act;

(3) Cosmetic surgery, unless medically necessary;

(4) Prescribed drugs and medicines incidental to outpatient care;

(5) Ambulance services, unless medically necessary;

(6) Treatment for chronic alcoholism and drug addiction, except as required

by section 1302(1) (E) of the Act and paragraph (a) (5) of this section;

(7) Care for military service connected disabilities for which the member is legally entitled to services and for which facilities are reasonably available to this member;

(8) Care for conditions that State or local law requires be treated in a public facility;

(9) Dental services, except as required by section 1302(1) (H) of the Act;

(10) Vision care, except as required by section 1302(1) (H) of the Act;

(11) Custodial or domiciliary care;

(12) Experimental medical, surgical, or other experimental health care procedures unless approved as a basic health service by the policy making body of the health maintenance organization;

(13) Personal or comfort items and private rooms, unless medically necessary during inpatient hospitalization; and

(14) Whole blood and blood plasma.

**§ 110.103 Health benefits plan: supplemental health services.**

(a) Each health maintenance organization shall:

(1) Provide or arrange for the provision of at least the following supplemental health services for which the subscriber has contracted and for which the required health manpower is available:

(1) Services of facilities for intermediate and long-term care;

(11) Vision care not included as a basic health service;

(111) Dental services not included as a basic health service;

(iv) Mental health services not provided as a basic health service;

(v) Long-term physical medicine and rehabilitative services (including physical therapy); and

(vi) Prescription drugs prescribed in the course of provision of basic outpatient or supplemental health services.

(2) Determine the level and scope of such supplemental health services.

(b) A health maintenance organization is authorized, if it so elects, in connection with the prescription or provision of prescription drugs, to maintain, review, and evaluate a drug use profile of its members receiving such services, evaluate patterns of drug utilization to assure optimum drug therapy, and provide for instruction of its members and of health professionals in the use of prescription and nonprescription drugs. Each health maintenance organization providing such services shall insure that:

(1) The program is developed jointly by the physicians and pharmacists associated with the health maintenance organization;

(2) The objectives of the program are explained to all health professionals and members of the health maintenance organization;

(3) Individual rights are protected and that all information regarding and identifying an individual is available only to appropriate health professionals of the health maintenance organization;

and to the individual member at his request;

(4) The primary thrust of the program is optimum drug therapy for the individual member of the health maintenance organization; and

(5) The information obtained in drug utilization review is utilized in educational programs for professionals and members of the health maintenance organization.

#### § 110.104 Providers of services.

(a) Basic health services shall be provided or arranged for through health professionals who are members of the staff of the health maintenance organization or through medical groups or individual practice associations with which the health maintenance organization has entered into written service agreements. Such agreements shall include the acceptance by the members of the medical groups or individual practice associations of effective incentives, such as risk sharing or other financial incentives, designed to avoid unnecessary or unduly costly utilization of health services. To the extent that basic health services are not covered by such agreements, the health maintenance organization may arrange for their provision by other health professionals as members of its staff who are either directly employed or appointed to its staff through a contract for services, which contract shall provide for the method of compensation. Basic health services shall be so provided unless:

(1) The services are unusual or infrequently used services which do not warrant provision through staff of the health maintenance organization, a medical group, or an individual practice association as demonstrated by the health maintenance organization to the satisfaction of the Secretary. The provision of such services not provided through the staff of a health maintenance organization or through a medical group or an individual practice association shall be arranged for by the health maintenance organization with other providers in the area; or

(2) The services are required for a medically necessary emergency and not for reasons of convenience and are provided to a member other than through the health maintenance organization because the member's condition would be jeopardized before he could obtain such services through the health maintenance organization; or

(3) The services are provided as part of inpatient hospital services by employees or staff of a hospital.

(b) Each health maintenance organization shall pay the provider, or reimburse its members for the payment of, reasonable charges for basic health services or supplemental health services for which its members have contracted, which are medically necessary emergency services obtained within area or out-of-area other than through the health maintenance organization. Each health maintenance organization shall adopt procedures to review promptly all claims

from members for reimbursement for the provision of medically necessary health services, which procedures shall include the determination of the medical necessity for obtaining such services.

(c) Supplemental health services shall be provided or arranged for by the health maintenance organization and need not be provided through the staff of the health maintenance organization, nor through a medical group, nor through an individual practice association.

#### § 110.105 Payment for basic health services.

(a) Each health maintenance organization shall provide or arrange for the provision of basic health services for a basic health services payment which:

(1) Is to be paid on a periodic basis without regard to the dates such health services are provided;

(2) Is fixed without regard to the frequency, extent, or kind of such health services actually furnished;

(3) Is fixed under a community rating system; and

(4) May be supplemented by additional nominal copayments which may be required for the provision of specific basic health services. Each health maintenance organization may establish one or more copayment options, calculated on the basis of a community rating system.

(i) To insure that copayments are not a barrier to the utilization of health services or membership in the organization, a health maintenance organization shall not impose copayment charges that exceed 50 percent of the total cost of providing any single service to its members, nor in the aggregate more than 20 percent of the total cost of providing all basic health services.

(ii) No copayment may be imposed on any subscriber or members covered by his contract with the health maintenance organization in any calendar year, when the copayments made by such subscriber or members in such calendar year total 50 percent of the total annual premium cost which such subscriber or members would be required to pay if he or they were enrolled under an option with no copayments, if such subscriber or members demonstrates that copayments in that amount have been paid in such year.

(b) If, pursuant to any workmen's compensation or employer's liability law or other legislation of similar purpose or import, a third party would be responsible for all or part of the cost of basic health services provided by the health maintenance organization if services had not been provided by the health maintenance organization, then the health maintenance organization may collect from the third party the portion of the cost of such services for which such third party would be so responsible.

#### § 110.106 Payment for supplemental health services.

(a) A health maintenance organization may require supplemental health

services payments, in addition to the basic health services payments, for the provision of each health service included in the supplemental health services set forth in § 110.103 for which subscribers have contracted.

(b) Supplemental health services payments may be made in any agreed upon manner, such as prepayment, or fee-for-service. Supplemental health services payments which are fixed on a prepayment basis, however, shall be fixed under a community rating system.

(c) If, pursuant to any workmen's compensation or employer's liability law or other legislation of similar purpose or import, a third party would be responsible for all or part of the cost of supplemental health services provided by the health maintenance organization if services had not been provided by the health maintenance organization, then the health maintenance organization may collect from the third party the portion of the cost of such services for which such third party would be so responsible.

#### § 110.107 Availability, accessibility and continuity of basic and supplemental health services.

Within the area served by the health maintenance organization, basic health services and the supplemental health services for which members have contracted shall:

(a) Be provided or arranged for by the health maintenance organization;

(b) Be available and accessible to each of the health maintenance organization's members promptly as appropriate with respect to:

(1) Its geographic location, hours of operation, and provisions for after-hours services (Medically necessary emergency services must be available and accessible 24 hours a day, 7 days a week); and

(2) Staffing patterns within generally accepted norms for meeting the projected membership needs; and

(c) Be provided in a manner which assures continuity, including but not limited to:

(1) Provision of a health professional who is primarily responsible for coordinating the member's overall health care; and

(2) Development of a health (including medical) recordkeeping system through which all pertinent information relating to the health care of the patient is accumulated and is readily available to appropriate professionals.

#### § 110.108 Organization and operation.

Each health maintenance organization shall—

(a) Have a fiscally sound operation, as demonstrated by a financial plan, satisfactory to the Secretary, which:

(1) Identifies the achievement and maintenance of a positive cash flow, including provisions for retirement of existing and proposed indebtedness;

(2) Demonstrates the ability to establish reserves in compliance with applicable State laws pertaining to fiscal responsibility or such reserves as the Secretary may determine necessary rela-

tive to repayment of principal and interest on loans made or guaranteed under this part; and

(3) Demonstrates an approach to the risk of insolvency which allows for continuation of benefits for the duration of the contract period for which payment has been made, continuation of benefits to members who are confined on the date of insolvency in an inpatient facility until their discharge, and payments to unaffiliated providers for services rendered;

(b) Assume full financial risk on a prospective basis for the provision of basic health services, except that a health maintenance organization may obtain insurance or make other arrangements;

(1) For the cost of providing to any member basic health services the aggregate value of which exceeds \$5,000 in any year;

(2) For the cost of basic health services provided to its members other than through the organization because medical necessity required their provision before they could be secured through the organization; and

(3) For not more than 90 percent of the amount by which its costs for any of its fiscal years exceed 115 percent of its income for such fiscal year;

(c) After full and fair disclosure of benefits, coverage, rates, grievance procedures, location, and hours of service, and a general description of participating providers, offer enrollment to persons who are broadly representative of the various age, social, and income groups within the area it serves, except that in the case of a health maintenance organization which has a medically underserved population located (in whole or in part) in the area it serves, not more than 75 percent of the members of that organization may be enrolled from the medically underserved population unless the area in which such population resides is also a rural area;

(d) Have an open enrollment period of not less than thirty days at least once during each consecutive twelve-month period during which enrollment period it accepts, up to its capacity, individuals in the order in which they apply for enrollment and without regard to their health status or their health care needs, except that if the organization demonstrates to the satisfaction of the Secretary that—

(1) It has enrolled, or would be compelled to enroll, a disproportionate number of individuals who would be likely to utilize its services more often than an actuarially determined average of the utilization of services by current members and that enrollment during an open enrollment period of an additional number of such individuals would jeopardize its economic viability by requiring an increase in rates which would make the health maintenance organization noncompetitive in its area, or would otherwise jeopardize its economic viability, or

(2) If it maintained an open enrollment period it would not be able to comply with the requirements of paragraph (c) of this section, or

(3) It would be compelled to enroll a number of individuals which would exceed its capacity, based upon a reasonable projection of new enrollments under existing group contracts, the Secretary, at the request of the organization, may waive compliance with the open enrollment requirement of this paragraph for not more than twelve months: *Provided*, That the Secretary may provide additional such waivers to that organization if the organization submits a separate, satisfactory request and justification for each such waiver;

(e) In order to obtain a waiver of the annual open enrollment period required in paragraph (d) of this section,

(1) In the case of paragraph (d) (1) of this section, submit documentation that the health maintenance organization has prospectively determined on an actuarial basis, utilizing data available in the area or from similar organizations elsewhere, that the average utilization of services of potential individual members would so increase costs as to jeopardize the economic viability of the organization if it maintained an open enrollment period. The data concerning the prospective utilization of individual members need not be obtained by the health maintenance organization from actual individual cases in its area, but may be composite data from known experiences; or

(2) In the case of paragraph (d) (2) of this section, indicate, upon the basis of reasonable estimates, that an open enrollment period would result in a total enrollment of more than 50 percent of persons receiving insurance benefits under Title XVIII of the Social Security Act or persons receiving medical assistance under a State plan approved under Title XIX of such Act, in violation of § 110.109 (b); or

(3) In the case of paragraph (d) (3) of this section, indicate, upon the basis of reasonable estimates that an open enrollment period would result in the enrollment of more members than could be served within the capacity of the organization, considering the new enrollment anticipated under existing group contracts;

(f) Not expel or refuse to re-enroll any member because of his health status or his health care needs, nor refuse to enroll individual members of a group on the basis of the health status or health care needs of such individuals;

(g) Offer each subscriber leaving a group a membership agreement on the same terms and conditions as are available to a non-group subscriber;

(h) Be organized in such a manner that assures that:

(1) No later than one year after becoming operational as a qualified health maintenance organization, at least one-third of the membership of the Board of Directors of the health maintenance organization or in the absence of such, its equivalent policy-making body, will be members of the organization. No member having ownership or interest in, or employed by or gaining financing reward from direct dealings with, the health

maintenance organization, or with a plan-affiliated institution or organization, and no members of his immediate family shall be included in the minimum one-third member representation on the Board or policy-making body; except that none of the foregoing shall prohibit the payment of directors' fees or other similar fees, or interest and dividends derived from membership in a cooperative, to persons serving on such Board or body; and

(2) There shall be equitable representation on the member portion of such policy-making body of members from the medically underserved populations in proportion to their enrollment relative to the entire enrollment; except that if the medically underserved membership is at least 5 percent of the total enrollment, then such population shall not be without representation;

(i) Be organized in such a manner that provides meaningful procedures for hearing and resolving grievances between the health maintenance organization (including the staff of the health maintenance organization, the medical group, and the individual practice association) and the members of the organization, which procedures will assure that grievances and complaints will be transmitted in a timely manner to appropriate decision-making levels within the organization which have authority to take corrective action;

(j) Have organizational arrangements, consistent with program emphasis on quality health care, for an ongoing quality assurance program for its health services which program

(1) Stresses health outcomes to the extent consistent with the state of the art;

(2) Provides review by physicians and other health professionals of the process followed in the provision of health services;

(3) Utilizes systematic data collection of performance and patient results, provides interpretation of such data to the practitioners, and institutes needed change; and

(4) Is designed in such a manner as is likely to meet the standards established pursuant to section 1155(e) of the Social Security Act (i.e. Professional Standards Review) for services provided by hospitals and other operating health care facilities or organizations;

(k) Assure that the providers through which the health maintenance organization provides basic and supplemental health services are certified under Title XVIII of the Social Security Act (Medicare) in accordance with 20 CFR Part 405, or in accordance with the regulations governing participation of providers in the Medical Assistance Program under Title XIX of the Social Security Act (Medicaid): *Provided*, That clinical laboratories subject to section 353 of the Act (Clinical Laboratories Improvement Act) shall, unless exempted thereunder, be certified in accordance with regulations governing participation of such laboratories under such Titles XVIII and XIX;

(l) Provide, or make arrangements for, continuing education for its health professional staff;

(m) In support of the provision of health services, offer its members the following:

(1) Health education services and education in the appropriate use of health services and in the contribution each member can make to the maintenance of his own health;

(2) Instruction in personal health care measures;

(3) Information about its services, including recommendations on generally accepted medical standards for use and frequency of such services; and

(4) Nutritional education and counseling;

(n) In support of the provision of health services, offer its members medical social services, which shall include appropriate assistance in dealing with the physical, emotional and economic impact of illness and disability through services such as pre- and post-hospitalization planning, referral to services provided through community health and social welfare agencies, and related family counseling;

(o) Provide an effective procedure while safeguarding the confidentiality of the doctor-patient relationship, to develop, compile, evaluate, and report, at such times and in such manner as the Secretary may require, to the Secretary, to its members, and to the general public, statistics and other information relating to;

(1) The cost of its operations;

(2) The patterns of utilization of its services;

(3) The availability, accessibility, and acceptability of its services;

(4) To the extent practical, developments in the health status of its members; and

(5) Such other matters as the Secretary may require;

(p) Be organized and operated in a manner intended to preserve human dignity;

(q) Establish adequate procedures to insure confidentiality of its members' health (including medical) records; and

(r) Make arrangements with referral resources to assure that the health maintenance organization is kept informed about the services provided to its members.

#### § 110.109 Special requirements: Titles XVIII and XIX of the Social Security Act.

(a) A Health Maintenance Organization which otherwise complies with section 1301(b) and section 1301(c) of the Act, and with the applicable regulations of this part, and which enrolls members who are entitled to insurance benefits under Title XVIII of the Social Security Act or to medical assistance under a State plan approved under Title XIX of such Act, may still be considered a qualified health maintenance organization, if with respect to its Title XVIII and Title XIX members:

(1) It provides, at a minimum, only those health services for which it will be

compensated under its Title XVIII Health Maintenance Organization contract with the Secretary or under the contract with a State for services under the Title XIX State plan, and it does not require such members to obtain coverage of any health service for which it will not be compensated under Title XVIII or under the Title XIX State plan;

(2) It fixes payments for any services paid for under Title XVIII or under a Title XIX State plan on a basis other than a community rating system;

(3) It assumes full financial risk for the provision of health services only as required under Title XVIII of the Social Security Act or under its contract with a State for services under the Title XIX State plan;

(4) With respect to health services provided which it is not required to provide or for which it is not compensated under Title XVIII or under the contract with a State for services under the Title XIX State plan, it fixes payments for such services on a community rating system, fee-for-service, or other basis; and

(5) It complies with the applicable reimbursement provisions authorized under Title XVIII or under the Title XIX State plan of the State with which it is contracting.

(b) A health maintenance organization which enters into a contract with the Secretary under Title XVIII of the Social Security Act or with a State under Title XIX of such Act shall comply with the applicable Title XVIII or Title XIX deductible and coinsurance requirements in accordance with the provisions of Title XVIII or the Title XIX State plan of the State with which it is contracting. Co-payment options which are not in accordance with a Title XIX State plan may not be imposed on Title XIX enrollees.

(c) At no time shall the members of a qualified health maintenance organization who are entitled to insurance benefits under Title XVIII of the Social Security Act or to medical assistance under a State plan approved under Title XIX of the Social Security Act constitute more than 50 percent of the total membership unless for good cause shown the Secretary waives such requirement.

(d) Any grievance procedures authorized under Title XVIII or Title XIX of the Social Security Act are not superseded by the provisions of § 110.108(i).

#### Subpart B—Federal Financial Assistance: General

##### § 110.201 Applicability.

The regulations of this subpart apply to the award of grants, contracts, loans, and loan guarantees to public or nonprofit private entities or private entities (other than nonprofit private entities) for projects as authorized by sections 1303, 1304, and 1305 of the Act.

##### § 110.202 Definitions.

(a) "Nonprofit" as applied to a private entity, agency, institution or organization means a private entity, agency, institution, or organization, no part of the net earnings of which inures, or may

lawfully inure, to the benefit of any private shareholder or individual.

(b) "Section 314(a) State health planning agency" (314(a) agency) means the agency of a State which administers or supervises the administration of a State's health planning functions under a State plan approved under section 314(a) of the Act; and the term "section 314(b) areawide health planning agency" (314(b) agency) means a public or nonprofit private agency or organization which meets the requirements of section 314(b) of the Act and which has developed a comprehensive regional, metropolitan, or other local area plan or plans referred to in section 314(b) of the Act.

(c) "Significant expansion" means (1) a planned increase in membership, to be effected at a rate which exceeds the average growth rate (see §§ 110.303(g), 110.403(h), and 110.404(f)) of the health maintenance organization and which will require an increase in the number of health professionals serving members of the health maintenance organization or an expansion of the physical capacity of the total health facilities; or (2) a planned expansion of the service area beyond the current service area which would be made possible by the addition of health service delivery facilities and health professionals to serve members at a new site or sites in areas previously without such services sites. Only organizations which have been found by the Secretary to be qualified health maintenance organizations are eligible to apply for assistance for expansion under sections 1303 and 1304 of the Act.

##### § 110.203 Application requirements.

(a) An application for a grant, loan or loan guarantee shall be submitted to the Secretary at such time and in such form and manner as the Secretary may prescribe.

(b) The application shall contain a budget and a narrative describing the manner in which the applicant intends to conduct the project and carry out the requirements of these regulations. The application must describe the project in sufficient detail to identify clearly the need for and nature, specific objectives, plan and methods of the project.

(c) The application must be executed by an individual authorized to act for the applicant and to assume in behalf of the applicant the obligations imposed by the statute, the regulations of this subpart, and any additional conditions of the award.

(d) Applicants must submit an audited full financial statement unless exempted by the Secretary. An applicant whose financial statement shows unobligated cash assets which presumably could be used to conduct all or part of the project or undertaking for which application is made must also submit a detailed statement satisfactory to the Secretary stating why the unobligated cash assets of the applicant (other than those to be used to meet the applicant's contribution requirements) are not available or are inadequate for the planned project.

An applicant for a loan or loan guarantee shall also submit a written verification from at least two public or two private lending agencies or institutions demonstrating that, after a formal request,

(1) Funds have been denied in the amount requested in the application, or

(2) Funds in the amount requested in the application are available only at an interest rate in excess of those currently in effect for the loan and loan guarantee program on the date of the application. On the basis of the information submitted, the Secretary will determine whether or not the applicant would not be able to complete the project or undertaking for which the application is submitted without the assistance applied for.

(e) Each application must contain the following assurances, as appropriate:

(1) In the case of an application for assistance under section 1303 of the Act, if the survey or other activity supported demonstrates that the development and operation or the expansion of the operation of a health maintenance organization is feasible, the applicant will be, or will form, or expand the operation of, as the case may be, a health maintenance organization;

(2) In the case of an application for assistance under section 1304 of the Act, the applicant will develop and operate or expand the operation of, as the case may be, a health maintenance organization;

(3) When operational as a health maintenance organization, the applicant will (i) provide basic and supplemental health services to its members, (ii) provide such services in the manner prescribed by section 1301(b) of the Act and by the regulations of this part, and (iii) be organized and operated in the manner prescribed by section 1301(c) of the Act and by the regulations of this part;

(4) When operational as a health maintenance organization, the applicant will enroll, and maintain an enrollment of, the maximum number of members that its available and potential resources will enable it to serve effectively. Maximum number of members is defined as the actual or projected enrollment which the health maintenance organization can serve, considering the availability of the required health manpower in the area to be served by the organization and the capacity of the facilities of the organization.

(f) Each application which evidences or projects an enrollment of at least 66 percent from a nonmetropolitan area shall identify the area in which such population resides and indicate the percent of anticipated enrollment to be drawn from such area.

(g) Each application which evidences, or projects an enrollment of, at least 30 percent of its members from a medically underserved population when the health maintenance organization first receives financial assistance or becomes operational shall identify the area in which such population resides, the total population of that area, and the percent of anticipated enrollment to be drawn from

that area. Medically underserved areas will be designated by the Secretary, taking into consideration the following factors, among others:

(1) Available health resources in relation to size of the area and its population, including appropriate ratios of primary care physicians (both doctors of medicine and doctors of osteopathy) in general or family practice, internal medicine, pediatrics, obstetrics and gynecology, or general surgery, to population;

(2) Health indices for the population of the area, such as infant mortality rate;

(3) Economic factors affecting the population's access to health services, such as percentage of the population with incomes below the poverty level; and

(4) Demographic factors affecting the population's need/demand for health services, such as percentage of the population age 65 or over.

The designation of such areas may be made by the Secretary only after consideration of the comments, if any, of the appropriate 314 health planning agency whose plan covers (in whole or in part) the area in which such population group resides.

(h) Each application must show that each 314(b) agency whose section 314(b) plan covers (in whole or in part) the area to be served by the health maintenance organization for which such application is submitted (or if there is no such agency, the 314(a) agency whose section 314(a) plan covers (in whole or in part) such area) has been sent a copy of the application concurrent with its submission to the appropriate Regional Office of the Department of Health, Education, and Welfare. Such 314 agency shall have 60 days in which to review and comment on the application, commencing on the day the application is received. The applicant shall request that the comments of such agencies be forwarded to the Secretary through the appropriate Department of Health, Education, and Welfare Regional Office not later than 60 days from the date the application is received.

(i) If under applicable State law, the application may not be submitted without the approval of the 314(b) or the 314(a) agency, the applicant shall obtain such approval which must be included as a part of the application.

(j) The application shall provide written information describing the applicant's development and operation of any prior projects which were supported by funds or by loans or loan guarantees under Title XIII of the Act. Applicants must also describe projects for the planning or operation of health service delivery programs supported under any other titles of the Public Health Service Act, or for which applications under the Act are currently under consideration.

(k) Applicants for more than one grant, contract, loan, or loan guarantee under Title XIII of the Act, simultaneously or over the course of time, shall not be required to duplicate information, but shall update such information with each subsequent application.

§ 110.204 314(b) or 314(a) agency review and comments.

The appropriate 314(b) or 314(a) agency should provide to the Secretary through the appropriate Department of Health, Education, and Welfare Regional Office comments and recommendations on approval, including the general bases for comments pertinent to inadequacies, if any, in the applications, with respect to the following:

(a) Compatibility of the proposed project with the areawide or State plan for health services;

(b) Accuracy and thoroughness of the description of the medical services area in which the applicant proposes to develop, operate, or expand a health maintenance organization;

(c) Accuracy and thoroughness with which applicant has identified the population groups to be served by the proposed health maintenance organization as required by §§ 110.203(f) and 110.203(g);

(d) Anticipated impact of the proposed project on the general accessibility and availability of care in the area, including:

(1) Whether the proposed project meets the needs of the community for health services in the proposed service area;

(2) Effects of offering an alternative form of health services to individuals or groups; and

(3) Identification of existing barriers to the effective delivery of health services, which may include geographic, economic, cultural and language barriers;

(e) Economic impact, including:

(1) Effects on existing health resources or facilities; and

(2) Potential of proposed project to draw new health resources into the area; and

(f) Agency cooperation, including:

(1) Applicant's statement of intent to work cooperatively with the appropriate 314 agency; and

(2) The experience of the applicant, if any, in dealing with other segments of the health care community; and

(g) Whether arrangements for services appear realistic, achievable and appropriate, including, but not limited to:

(1) Potential for proposed project to be adequately staffed to accommodate enrolled members or anticipated membership;

(2) Potential for adequate provision of the services, considering availability of manpower and equipment, and success of previous attempts to recruit personnel;

(3) Availability of health professionals in the area, and adequate evidence of cooperative planning with these providers (including summaries of verbal contacts or copies of correspondence); and

(4) Reliability of evidence of support for and acceptance of the proposed project by the community.

§ 110.205 Records, reports, inspection, and audit.

(a) Each grant, loan, or loan guarantee awarded pursuant to this Part

shall be subject to the condition that the recipient shall maintain records which disclose the amount and disposition of the proceeds of the grant, or loan (directly made or guaranteed), the total cost of the undertaking in connection with which such assistance was given or used, the amount of that portion of the cost of the undertaking supplied by other sources, and such other records as will facilitate an effective audit.

(b) The Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access for the purpose of audit, examination or evaluation to any books, documents, papers, and records of the recipients of a grant, loan or loan guarantee under Title XIII of the Act which relate to such assistance.

(c) A report shall be submitted to the Secretary by the recipient of a grant, loan, or loan guarantee under Title XIII of the Act not later than 60 days after the termination date of each project, describing existing and anticipated plans, developments and operations in accordance with information required under section 1306(b) (3) of the Act.

(d) Such other reports shall be submitted as the Secretary may require to meet the provisions of the Act and these regulations.

#### § 110.206 Additional conditions.

The Secretary may, with respect to the approval of any grant, contract, loan, or loan guarantee, impose additional conditions prior to or at the time of any approval when, in his judgment, such conditions are necessary to assure or protect the advancement of the approved project, the interests of public health, or the conservation of project funds.

#### § 110.207 Nondiscrimination.

Attention is called to the requirements of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. 2000d et seq.) and in particular section 601 of such Act which provides that no person in the United States shall on the grounds of race, color, or national origin be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance. A regulation implementing such Title VI, which applies to all financial assistance under this part, has been issued by the Secretary of Health, Education, and Welfare with the approval of the President (45 CFR Part 80). In addition no person shall, on the grounds of sex, or creed (unless otherwise medically indicated) be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance. Nor shall any person be denied employment in or by such program or activity so receiving Federal financial assistance on the grounds of age, sex, creed, or marital status.

#### § 110.208 Inventions or discoveries.

An award under this part is subject to the regulations of the Department of Health, Education, and Welfare as set

forth in 45 CFR Parts 6, "Inventions and Patents (General)" and 8, "Inventions Resulting from Research Grants, Fellowship Awards, and Contracts for Research". Such regulations shall apply to any activity for which funds are in fact used whether within the scope of the project as approved or otherwise. Appropriate measures shall be taken by the award recipient and by the Secretary to assure that no contracts, assignments or other arrangements inconsistent with the award obligations are continued or entered into and that all personnel involved in the supported activity are aware of and comply with such obligations. Laboratory notes, related technical data, and information pertaining to inventions and discoveries shall be maintained for such periods, and filed with or otherwise made available to the Secretary or those he may designate at such times and in such manner as he may determine necessary to carry out such Department regulations.

#### § 110.209 Publications, copyright, and data.

(a) (1) Except as may otherwise be provided under the terms and conditions of the award, the applicant may copyright without prior approval any data developed or resulting from a project supported under this Part, subject, however, to a royalty-free, non-exclusive, and irrevocable license or right in the Government to reproduce, translate, publish, use, disseminate, and dispose of such materials and to authorize others to do so.

(2) The government may use, duplicate, or disclose in any manner and for any purpose whatsoever, and have or permit others to do so, all data developed during the term of Federal financial assistance.

(3) Whenever any data is to be obtained from a contractor or subcontractor under the assisted projects, the applicant shall include this section (§ 110.209) in the contract or subcontract without alteration, making it applicable to the subject matter of the contract or subcontract, and no other clause shall be used to diminish the government's right in that contractor's or subcontractor's data.

(b) As used in this section, the term "data" means writings, films, sound recordings, pictorial reproductions, drawings, designs or other graphic representations, procedural manuals, forms, diagrams, work-flow charts, equipment description, data files and data processing or computer programs, and works of any similar nature (whether or not copyrighted or copyrightable) which are developed during the term of Federal financial assistance.

#### § 110.210 Confidentiality.

Each award is subject to the condition that all information obtained by the personnel of the project from participants in the project related to their examination, care, and treatment shall be held confidential, and shall not be divulged without the individual's informed consent except as may be re-

quired by law or as may be necessary to provide service to the individual or to the Secretary as part of his duties under the Act. Information may be disclosed in summary, statistical, or other form which does not identify particular individuals.

#### § 110.211 Applicability of 45 CFR Part 74.

The provisions of 45 CFR Part 74, establishing uniform administrative requirements and cost principles, shall apply to all awards under this Part to State and local governments as those terms are defined in subpart A of that Part 74. The relevant provisions of the following subparts of Part 74 shall also apply to all other grantee organizations under this part:

- Subpart
- A General.
- B Cash Depositories.
- C Bonding and Insurance.
- D Retention and Custodial Requirements for Records.
- F Grant related Income.
- G Matching and Cost Sharing.
- K Grant Payment Requirements.
- L Budget Revision Procedures.
- M Grant Closeout, Suspension, and Termination.
- O Property.
- Q Cost Principles.

#### § 110.212 Use of funds.

Any grants, loans, and loan guarantees awarded pursuant to this Part as well as other Federal funds to be used in the performance of the approved project shall be expended solely for carrying out the approved project in accordance with the statute, the regulations of this Part, and the terms and conditions of the award or assistance.

#### § 110.213 Grantee accountability.

(a) All payments made by the Secretary under grants awarded pursuant to sections 1303 and 1304 of the Act shall be recorded by the grantee in accounting records separate from the records of all other grant funds, including funds derived from other grant awards. With respect to each approved project the grantee shall account for the sum total of all amounts paid by presenting or otherwise making available evidence satisfactory to the Secretary of expenditures for direct and indirect costs meeting the requirements of this part: *Provided, however,* That when the amount awarded for indirect cost was based on a predetermined, fixed-percentage of estimated direct costs, the amount allowed for indirect costs shall be computed on the basis of such predetermined fixed-percentage rates applied to the total, or a selected element thereof, of the reimbursable direct costs incurred.

(b) (1) A grantee shall render, with respect to each approved project, a full account, as provided herein, as of date of the termination of grant support. The Secretary may require other special and periodic accounting.

(2) There shall be payable to the Federal Government as final settlement with respect to each approved project the total sum of:

(i) Any amount not accounted for pursuant to paragraph (a) of this section;

(ii) Any other amounts due pursuant to Subparts F, M, and O of 45 CFR Part 74.

Such total sum shall constitute a debt owed by the grantee to the Federal Government and shall be recovered from the grantee or its successors or assignees by setoff or other action as provided by law.

**§ 110.214 Continued support.**

Neither the approval of any project nor any award of financial assistance shall commit or obligate the United States to make any additional, supplemental, continuation, or other award with respect to any approved project or portion thereof. For continuation support, applicants must make separate applications at such times and in such manner as the Secretary may direct.

**Subpart C—Grants and Contracts for Feasibility Surveys**

**§ 110.301 Applicability.**

The regulations of this subpart, in addition to the regulations of subpart B of this Part, are applicable to grants awarded pursuant to section 1303 of the Act for projects to conduct surveys or other activities to determine the feasibility of developing and operating or expanding the operation of health maintenance organizations.

**§ 110.302 Eligibility.**

(a) *Eligible applicants.* Any public or private nonprofit entity which is or proposes to develop or become a health maintenance organization is eligible to apply for an award under this subpart, except that in the case of applications for support of expansion, only organizations which have been found by the Secretary to be qualified health maintenance organizations are eligible to apply.

(b) *Eligible projects.* Awards may be made pursuant to section 1303 of the Act, the regulations of subpart B, and this subpart, to eligible applicants to assist in conducting surveys or other activities to determine the feasibility of developing or expanding the operation of organizations which meet or propose to meet the requirements under subpart A of these regulations.

**§ 110.303 Project elements.**

An approvable application must provide:

(a) Statements which describe concisely:

(1) The goals and objectives for the proposed health maintenance organization;

(2) The administrative, managerial, and organizational arrangements and resources to be utilized to conduct the feasibility study;

(3) The proposed service area; and (4) intended financial participation of the applicant, specifying the type of contributions, such as cash or services, loans of full- or part-time staff, equipment,

spaces, materials, or facilities or other contributions;

(b) An assurance that the applicant will cooperate with the appropriate 314 health planning agency;

(c) Written evidence of notification to the local medical societies of the applicant's intention to apply for assistance;

(d) Letters or other forms of evidence that there is general support for and acceptance of the proposed health maintenance organization by the community which the applicant proposes to serve;

(e) Concise plans for conducting the feasibility study, which must include, at a minimum, a description of tasks for each activity listed below, accompanied by a time-phased milestone chart indicating proposed funding and manpower to be allocated to each activity (where circumstances indicate that it would be appropriate and consistent with the intent of the Act, additional activities may be proposed in the application):

(1) Identify pertinent State laws, regulations, and practices relating to operating as a health maintenance organization;

(2) Identify population groups which would be sources of prepayment and other potential sources of payment for services when the health maintenance organization becomes operational;

(3) Identify potential providers or sources of providers of basic health services;

(4) Develop an estimate of the amount to be charged for basic health services when the proposed health maintenance organization becomes operational;

(5) Develop an estimate of the enrollment and funds required to reach the financial breakeven point; and

(6) Develop a preliminary estimate of the facilities required for operational status;

(f) In addition, in the case of an existing organization which provides health care services financed on a prepaid capitation basis to an enrolled population which is requesting assistance to become a health maintenance organization, identification of gaps between the applicant's current operation and the requirements of Subpart A of this Part;

(g) In addition, in the case of qualified health maintenance organizations requesting assistance for significant expansion:

(1) Data on prepaid membership totals for annual intervals over the past five years, or if the health maintenance organization has not been operating for five years, such data on a quarterly basis for the time during which it has been in operation;

(2) The current enrollment figure;

(3) A description of the current health service delivery facilities, including an estimate of their capacity;

(4) The number and specialties of current health professionals serving its members; and

(5) The plans for the proposed significant expansion which demonstrate that the definition of significant expansion in § 110.202(c) will be met.

**§ 110.304 Evaluation and award.**

(a) Within the limits of funds available for such purpose, the Secretary may make awards to cover up to 90 percent of the cost of projects, or in the case of projects which will draw not less than 30 percent nor more than the appropriate percentage (as determined under § 110.108(c)) of its anticipated enrollment from medically under-served populations, up to 100 percent of the costs, to those applicants whose projects will, in his judgment best promote the purposes of section 1303 of the Act and the regulations of this subpart, taking into account:

(1) The degree to which the proposed project satisfactorily provides for elements set forth in § 110.303 above.

(2) The comments of the appropriate 314 health planning agency.

(3) The degree to which the goals and objectives of the proposed project will promote the purposes of the Act and are consistent with the generally recognized capability of effectively organized and managed health maintenance organizations to reduce inappropriate hospital utilization, to contain health care costs, to use effectively medical and other health manpower, to emphasize early detection and treatment of illness, and to contribute to a better distribution and quality of health care.

(4) The capability of the applicant to organize and manage the project successfully.

(5) The soundness of the proposed plan for conducting the feasibility study and for assuring effective utilization of grant funds.

(6) The potential of the project to obtain indications of the willingness of basic medical and health care providers to participate in the operation of the health maintenance organization.

(7) The probability of financial viability based on potential sources of financial support for development and operations and potential sources of enrollment.

(8) The inclusion of medically under-served populations in the projected enrollment.

(9) Location relative to the number of organizations providing health services to a defined population on a prepaid capitation basis, which are already operating in the proposed geographic area.

(10) The percentage of total anticipated enrollment to be drawn from non-metropolitan areas to be served.

(11) Evidence of the applicant's intended contribution to the project.

(12) In the case of an existing organization operating on a prepaid capitation basis, the applicant's potential for expeditious transition into a qualified health maintenance organization.

(13) In the case of expansion projects, the potential rate of increase of expansion, or the potential increase in the area to be served by the expanded health maintenance organization.

(b) In considering applications under this subpart, the Secretary will give priority to applications which contain as-

surances satisfactory to the Secretary that when the organizations become operational not less than 30 percent of their members will be members of a medically underserved population.

**§ 110.305 Funding duration and limitation.**

(a) The amount of any award shall be determined by the Secretary on the basis of his estimate of the sum necessary for project costs, provided, however, that any single grant may not exceed \$50,000.

(b) Feasibility survey applicants may propose that the award period be 12 months or less. Feasibility survey projects shall be completed within the period of the award. The Secretary may make not more than one additional grant for a project for a feasibility survey for which a grant has previously been made, and may permit additional time (up to 12 months) for completion of the project if he determines that the additional grant or additional time, or both, is needed to complete the project adequately.

**Subpart D—Grants and Loan Guarantees for Planning and Initial Development Costs**

**§ 110.401 Applicability.**

The regulations of this subpart, in addition to the regulations of subpart B of this Part, are applicable to:

(a) Grants awarded pursuant to section 1304 of the Act for projects for planning, and initial development of health maintenance organizations or for significant expansion of the membership of, or areas served by qualified health maintenance organizations, and

(b) Guarantees made to non-Federal lenders of payment of the principal of and interest on loans made to private entities (other than nonprofit private entities) for such projects to serve medically underserved populations.

**§ 110.402 Eligibility.**

(a) *Eligible applicants.* Any public or nonprofit private entity, which is or which proposes to become a health maintenance organization, is eligible to apply for a grant, and any private entity (other than a nonprofit private entity) which is or which proposes to become a health maintenance organization and which proposes to serve a medically underserved population is eligible to apply for a loan guarantee under this subpart, except that in the case of applications for support of expansion, only organizations which have been found by the Secretary to be qualified health maintenance organizations are eligible to apply.

(b) *Eligible projects.* (1) Awards of grants may be made pursuant to section 1304 of the Act and the regulations of subpart B and this subpart to eligible applicants for planning for the establishment of health maintenance organizations, or for the significant expansion of the membership of, or areas served by, health maintenance organizations meeting the requirements of subpart A of these regulations, or for the initial de-

velopment or actual expansion of such organizations;

(2) Guarantees may be made pursuant to section 1304 of the Act and the regulations of subpart B and this subpart to eligible applicants for the payment of the principal of and the interest on loans for planning projects for the establishment of health maintenance organizations, or the expansion of existing organizations which have been found by the Secretary to meet the applicable requirements of Title XIII of the Act and the applicable regulations of this part, or for the initial development of actual expansion of such health maintenance organizations: *Provided*, that at least 30 percent of the projected members of such organizations are from medically underserved populations.

**§ 110.403 Project elements for planning.**

An approvable application must provide:

(a) Statements which describe in detail:

(1) The goals and objectives of the proposed health maintenance organization;

(2) The administrative, managerial, and organizational arrangements and resources to be utilized in the performance of the proposed activities;

(3) The proposed service area; and

(4) The intended financial participation of the applicant, specifying the type of contribution such as cash or services, loans of full- or part-time staff, equipment, space, materials, facilities, or other contributions.

(b) An assurance that the applicant will cooperate with the appropriate 314 health planning agency.

(c) Written evidence of notification to the local medical societies of the applicant's intention to apply for assistance.

(d) Letters or other forms of evidence that there is support for and acceptance of the project by organizations, institutions, and/or employer groups which may participate in the development of the proposed health maintenance organization.

(e) A detailed report of the results of the survey or study which established the feasibility of developing the health maintenance organization, as well as of any other activities relating to the development of the health maintenance organization undertaken prior to application for planning assistance. With regard to the report of the feasibility survey, information on the following must be included:

(1) Status of the applicant in terms of pertinent State laws, regulations, and practices relating to operating as a health maintenance organization;

(2) Organizational structure of the proposed health maintenance organization;

(3) Providers of basic health services who have agreed or might reasonably be expected to agree to provide health benefits;

(4) The types of population groups which would be sources of prepayment for an operational health maintenance

organization and other potential sources of payment for services when operational;

(5) Sources of payment and operational support including:

(i) Preliminary estimate of the amount to be charged for basic health benefits when the proposed health maintenance organization becomes operational; and

(ii) Estimate of enrollment and income required to reach the financial breakeven point; and

(6) A preliminary estimate of facilities required for operational status.

(f) Concise plans for accomplishing planning stage activities, which must include at a minimum, a description of tasks for each activity listed below, accompanied by a time-phased milestone chart indicating proposed funding and manpower to be allocated to each such activity (where circumstances indicate that it would be appropriate and consistent with the intent of the Act, additional activities may be proposed):

(1) Recruit key project staff;

(2) Plan for and initiate appropriate action relating to any State legal and/or regulatory restrictions;

(3) Develop formal organization;

(4) Establish community support;

(5) Refine market estimate made in feasibility survey;

(6) Develop health benefits plan;

(7) Develop premium structure;

(8) Develop plans for marketing of the services and enrollment of members;

(9) Develop budget and financial plan; and

(10) Identify providers of basic health services and develop preliminary agreements to negotiate with these providers; and

(11) Plan for necessary facilities and equipment.

(g) In addition, in the case of an existing organization which provides health care services financed on a prepaid capitation basis to an enrolled population which is requesting assistance to become a qualified health maintenance organization, an identification of gaps between the applicant's current operation and the requirements of Subpart A of this Part.

(h) In addition, in the case of qualified health maintenance organizations requesting assistance for significant expansion:

(1) Data on prepaid membership totals for annual intervals over the past five years, or if the health maintenance organization has not been operating for five years, such data on a quarterly basis for the time during which it has been in operation;

(2) The current enrollment figure;

(3) A description of the current health service delivery facilities, including an estimate of their capacity;

(4) The number and specialties of current health professionals serving its members; and

(5) The detailed plans for the proposed significant expansion which demonstrate that the definition of significant expansion in § 110.202(c) will be met.

**§ 110.404 Project elements for initial development.**

An approvable application must provide:

(a) Written evidence satisfactory to the Secretary that the feasibility of the establishment and operation or expansion has been established by the applicant and that sufficient planning for the establishment or expansion has been conducted by the applicant. In addition, applicants must provide the information, assurances and evidence required by § 110.403 (a), (b), (c), and (d) and must report all other activities relating to the development of the health maintenance organization undertaken prior to application for initial development assistance.

(b) Detailed plans, which must include, at a minimum, tasks designed to accomplish the activities listed below, accompanied by a time-phased milestone chart indicating proposed funding and manpower to be allocated to each (where circumstances indicate that it would be appropriate and consistent with the intent of the Act, additional activities may be proposed in the application):

(1) Develop a schedule to meet the requirements of subpart A of this Part;

(2) Complete activities related to resolving legal issues;

(3) Recruit and train personnel essential for operation as a health maintenance organization;

(4) Develop a comprehensive financial plan;

(5) Organize physician and other basic health services;

(6) Construct/renovate health maintenance organization facilities;

(7) Organize ambulatory care facility;

(8) Formalize contract arrangements; and

(9) Initiate enrollment plan.

(c) Signed letters from at least three physicians indicating that they intend or are willing to be employed by or to contract with the proposed health maintenance organization for the provision of basic health services to its members and signed letters from one or more hospitals indicating that they intend to or are willing to negotiate an agreement to provide hospital services to members from the proposed health maintenance organization as necessary.

(d) In the case of an applicant which intends to serve Title XIX eligibles as part of the intended enrollment, evidence that the State Title XIX agency is willing to negotiate a prepaid capitation contract in the form of a letter or other document from the State Title XIX agency.

(e) In addition, in the case of an existing organization which provides health care services financed on a prepaid capitation basis to an enrolled population, which is requesting assistance to become a qualified health maintenance organization, and identification of gaps between the applicant's current operation and the requirements of subpart A of this Part.

(f) In addition, in the case of qualified health maintenance organizations requesting assistance for significant expansion:

(1) Data on prepaid membership totals for annual intervals over the past five years, or if the health maintenance organization has not been operating for five years, such data on a quarterly basis for the total number of years during which it has been in operation;

(2) The current enrollment figure;

(3) A description of the current health service delivery facilities, including an estimate of their capacity;

(4) The number and specialties of current health professionals serving its members; and

(5) The plans for the proposed significant expansion which demonstrate that the definition of significant expansion in § 110.202(c) will be met.

**§ 110.405 Funding duration and limitation.**

(a) *Planning projects.* (1) The amount of any award shall be determined by the Secretary on the basis of his estimate of the sum necessary for project costs, provided, that any single grant and the amount of principal of any single loan guaranteed under section 1304 of the Act may not exceed \$125,000.

(2) In considering applications under this subpart, the Secretary will give priority to applications which contain assurances satisfactory to the Secretary that when the organization becomes operational, not less than 30 percent of its members will be members of a medically underserved population. Applicants may propose that the award period be for one year or less, as appropriate to the planning activities to be accomplished. Planning projects shall be completed within the period of the award. The Secretary may not make more than one additional grant or loan guarantee for a planning project for which a grant or loan guarantee has previously been made, and may permit additional time (up to 12 months) for completion of the project if he determines that the additional grant or loan guarantee (as the case may be) or additional time, or both, is needed to complete the project adequately.

(b) *Initial development projects.* (1) The amount of any award shall be determined by the Secretary on the basis of his estimate of the sums necessary for project costs, provided, however, that the aggregate amount of loan guarantees and grants for any initial development project may not exceed \$1,000,000.

(2) Applicants may propose that the award period for initial development activities be one year or less, as appropriate to the initial development activities to be accomplished. Initial development projects shall be completed within the period of the award beginning on the first day of the month in which such award was made, and the number of grants made for any initial development project under section 1304 of the Act may not exceed a total of three. A loan guarantee for an initial development project may only be made for a loan (or loans) for initial development costs

incurred in a period not to exceed three years.

**§ 110.406 Evaluation and award.**

(a) Within the limits of funds available for such purpose, the Secretary may make awards to cover up to 90 percent of the cost of projects, or in the case of projects which will draw not less than 30 percent nor more than the appropriate percentage (as determined under § 110.108(c)) of its anticipated enrollment from medically underserved populations, up to 100 percent of the costs, to those applicants whose projects will, in his judgment, best promote the purposes of section 1304 of the Act and the regulations of this subpart, taking into account:

(1) The degree to which the proposed project satisfactorily provides for the elements set forth in § 110.403 or § 110.404.

(2) The comments of the appropriate 314 health planning agency.

(3) Whether the feasibility of the project has been established, and in the case of initial development applications, whether all requirements of a planning application have been met.

(4) The appropriateness of the goals and objectives of the proposed project.

(5) The effectiveness the proposed organization may reasonably be expected to have in reducing inappropriate hospital utilization, containing health care costs, using medical and other health manpower, emphasizing early detection and treatment of illnesses, and achieving a better distribution and quality of care.

(6) The capability of the applicant to organize and manage the project successfully.

(7) Evidence of the applicant's intended contribution to the project.

(8) Evidence of intent from providers expressing a willingness to be employed by or contract with the proposed health maintenance organization for the provision of basic health services.

(9) Evidence, in the form of letters, from individuals, groups or organizations indicating that they support the development and operation of the proposed health maintenance organization.

(10) The results of marketing efforts and the prospects for eventual economic viability as an operational health maintenance organization without continued Federal support.

(11) The inclusion of medically underserved populations in groups to be enrolled.

(12) Location relative to the number of organizations providing health services to a defined population on a prepaid capitation basis, which are already operating in the area.

(13) The percentage of anticipated total enrollment to be drawn from non-metropolitan areas to be served.

(14) In the case of an existing organization operating on a prepaid capitation basis, the applicant's potential for expeditious transition into a qualified health maintenance organization.

(15) In the case of expansion projects, the potential rate of increase of expansion.

sion, or the potential increase in the area to be served by the expanded health maintenance organization.

(b) In considering applications under this subpart the Secretary will give priority to applications which contain assurances satisfactory to the Secretary that when the organizations become operational, not less than 30 percent of their members will be members of a medically underserved population.

#### § 110.407 Loan guarantee provisions.

(a) *Disbursement of loan proceeds.* The principal amount of any loan guaranteed by the Secretary under this subpart shall be disbursed to the applicant in accordance with an agreement to be entered into between the parties to the loan and approved by the Secretary.

(b) *Length and maturity of loans.* The principal amount of each loan guarantee, together with interest thereon, shall be repayable over a period of 20 years, beginning on the date of endorsement of the loan guarantee by the Secretary. The Secretary may, however, approve a shorter repayment period where he determines that a repayment period of less than 20 years is more appropriate to an applicant's total financial plan.

(c) *Repayment.* The principal amount of each loan guarantee, together with interest thereon, shall be repayable in accordance with a repayment schedule which is to be agreed upon by the parties to the loan and approved by the Secretary prior to or at the time of his endorsement of the loan. Unless otherwise specifically authorized by the Secretary, each loan guaranteed by the Secretary shall be repayable in substantially level combined installments of principal and interest, to be paid at intervals not less frequently than annually, sufficient to amortize the loan through the final year of the life of the loan. Principal repayment during the first 36 months of operation may be deferred, with payment of interest only by the applicant during such period.

#### Subpart E—Loans and Loan Guarantees for Initial Operating Costs

##### § 110.501 Applicability.

The regulations of this subpart, in addition to the regulations of subpart B, are applicable to loans and loan guarantees awarded pursuant to section 1305 of the Act.

##### § 110.502 Definitions.

(a) "Operating cost" means any cost which under generally accepted accounting principles is not a capital expenditure and which is incurred on or after the first day of the applicable period of operation or expansion as defined in paragraph (b) of this section.

(b) "First 36 months of operations or expansion" means the 36 month period beginning on the first day of the month during which the health maintenance organization first provides services to members, or in the case of significant expansion, first provides services in accordance with its expansion plan.

##### § 110.503 Eligibility.

(a) *Eligible applicants.* Any public or nonprofit private qualified health maintenance organization is eligible to apply for a loan. Any private health maintenance organization (other than a nonprofit private qualified health maintenance organization) which will serve a medically underserved population is eligible to apply for a loan guarantee.

##### (b) Eligible projects.

(1) Loans may be made pursuant to section 1305 of the Act and the regulations of subpart B and this subpart to eligible applicants to assist them in meeting the amount by which their operating costs in the period of the first 36 months of their operation exceed their revenues in such period, or in meeting the amount by which their operating costs, which the Secretary determines are attributable to significant expansion in their membership or area served, as defined in § 110.202(c), and which are incurred in the period of the first 36 months of their operation after such expansion, exceed their revenues in that period which the Secretary determines are attributable to such expansion.

(2) Loan guarantees may be made pursuant to section 1305 of the Act and the regulations of Subpart B and this subpart to guarantee to non-Federal lenders payment of the principal of and the interest on loans made to any private health maintenance organization (other than a private nonprofit health maintenance organization) for the amounts referred to in paragraph (b) (1) of this section, but only if such health maintenance organizations will serve a medically underserved population.

##### § 110.504 Project elements.

An approvable application must provide:

(a) Statements which describe in detail:

(1) The applicant's adequate accomplishment of feasibility survey, planning, and development activities; and

(2) The health maintenance organization's management capability.

(b) Detailed information on the health maintenance organization's marketing plan and enrollment forecasts and experience.

(c) A detailed narrative statement describing:

(1) All existing and planned provider arrangements including copies of all executed contracts; and

(2) All facilities to be used in the delivery of health services.

(d) Financial information in such detail as the Secretary may prescribe.

(e) Evidence that any certificate of need required under State law for the operation of the health maintenance organization has been obtained by the applicant.

##### § 110.505 Reserve requirement.

The applicant receiving a loan or loan guarantee under section 1305 of the Act shall establish a restricted reserve account beginning at the point when the revenues and expenditures of the health

maintenance organization reach the breakeven point, or by the end of the 36-month period following the making of the loan or the guarantee under section 1305 of the Act, whichever is sooner, unless a longer period is approved by the Secretary. This reserve shall be so constituted as to accumulate no later than ten (10) years following the endorsement of the loan or loan guarantee, an aggregate amount equal to one year's principal of and interest on the loan, as determined under the terms of the loan made or guaranteed.

##### § 110.506 Evaluation and award.

Within the limits of funds available for such purposes, the Secretary may award loans or loan guarantees to those applicants whose projects will, in his judgment, best promote the purposes of section 1305 of the Act and the regulations of the Part, taking into account:

(a) The ability of the health maintenance organization to achieve financial viability;

(b) The ability of the health maintenance organization to make repayments of the principal and interest when due and to have additional funds to defray the remaining operating deficits;

(c) The comments, if any, of the appropriate 314 health planning agency;

(d) The relative distribution of qualified applicants with respect to the following factors:

(1) The inclusion of medically underserved populations in the groups to be enrolled;

(2) Location relative to the number of organizations providing health services to a defined population on a prepaid capitation basis, which are already operating in the proposed area; and

(3) The percentage of anticipated total enrollment drawn from nonmetropolitan areas served or to be served by the applicant.

##### § 110.507 Funding duration and limitation.

(a) The principal amount of any loan made or guaranteed under section 1305 of the Act in any fiscal year for a health maintenance organization shall not exceed \$1,000,000 and the aggregate amount of principal of loans made or guaranteed under section 1305 for a health maintenance organization shall not exceed \$2,500,000.

(b) A loan or loan guarantee under section 1305 of the Act shall be limited to two-thirds of the Secretary's projection of the amount by which operating costs in the first 36 months of operation exceed revenues for such period, except as approved by written waiver by the Secretary for such higher percentage of the total operating deficit.

(c) The approval of any loan or loan guarantee shall not obligate the United States in any way to make any additional loan or loan guarantee with respect to the approved application or portion thereof, except as may be otherwise set forth in the agreement between the United States and the approved applicant.

**§ 110.508 Loan provisions.**

(a) *Disbursement of loan proceeds.* The principal amount of any loan made or guaranteed by the Secretary under this subpart shall be disbursed to the applicant in accordance with an agreement to be entered into between the parties to the loan and approved by the Secretary.

(b) *Length and maturity of loans.* The principal amount of each loan or loan guarantee, together with interest thereon, shall be repayable over a period of 20 years, beginning on the date of endorsement of the loan or loan guarantee by the Secretary. The Secretary may, however, approve a shorter repayment period where he determines that a repayment period of less than 20 years is more appropriate to an applicant's total financial plan.

(c) *Repayment.* The principal amount of each loan or loan guarantee, together with interest thereon, shall be repayable in accordance with a repayment schedule which is to be agreed upon by the parties to the loan or loan guarantee and approved by the Secretary prior to or at the time of his endorsement of the loan. Unless otherwise specifically authorized by the Secretary, each loan made or guaranteed by the Secretary shall be repayable in substantially level combined installments of principal and interest to be paid at intervals not less frequently than annually, sufficient to

amortize the loan through the final year of the life of the loan. Principal repayment during the first 36 months of operation may be deferred, with payment of interest only by the applicant during such period.

**Subpart F—Qualification of Health Maintenance Organizations [Reserved]**

**Subpart G—Restrictive State Laws and Practices**

**§ 110.701 Restrictive laws and practices.**

(a) In the case of any entity—

(i) Which cannot do business as a health maintenance organization in a State in which it proposes to furnish basic and supplemental health services because that State by law, regulation, or otherwise—

(i) Requires as a condition to doing business in that State that a medical society approve the furnishing of services by the entity,

(ii) Requires that physicians constitute all or a percentage of its governing body,

(iii) Requires that all physicians or a percentage of physicians in the locale participate or be permitted to participate in the provision of services for the entity, or

(iv) Requires that the entity meet requirements for insurers of health care services doing business in that State respecting initial capitalization and estab-

lishment of financial reserves against insolvency, and

(2) For which a grant, contract, loan, or loan guarantee was made under the Act or which is a qualified health maintenance organization for purposes of section 1310 of the Act (relating to employees' health benefits plans), such requirements shall not apply to that entity so as to prevent it from operating as a health maintenance organization in accordance with section 1301 of the Act and these regulations.

(b) No State may establish or enforce any law which prevents a health maintenance organization for which a grant, loan, or loan guarantee was made under the Act or which is a qualified health maintenance organization for purposes of section 1310 of the Act (relating to employees' benefits plans), from soliciting members through advertising its services, charges, or other non-professional aspects of its operation. This subsection does not authorize any advertising which identifies, refers to, or makes any qualitative judgment concerning, any health professional who provides services for a health maintenance organization.

**Subpart H—Employees' Health Benefit Plans [Reserved]**

**Subpart I—Continued Regulation of Health Maintenance Organizations [Reserved]**

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PART IV



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## **DEPARTMENT OF LABOR**

**Employment Standards  
Administration**



### **MINIMUM WAGES FOR FEDERAL AND FEDERALLY ASSISTED CONSTRUCTION**

**General Wage Determination Decisions,  
Modifications, and Supersedeas  
Decisions; Index**

## DEPARTMENT OF LABOR

## Employment Standards Administration

MINIMUM WAGES FOR FEDERAL AND  
FEDERALLY ASSISTED CONSTRUCTIONModifications and Supersedeas Decisions to  
General Wage Determination Decisions

**General Wage Determination Decisions.** General Wage Determination Decisions of the Secretary of Labor specify, in accordance with applicable law and on the basis of information available to the Department of Labor from its study of local wage conditions and from other sources, the basic hourly wage rates and fringe benefit payments which are determined to be prevailing for the described classes of laborers and mechanics employed in construction activity of the character and in the localities specified therein.

The determinations in these decisions of such prevailing rates and fringe benefits have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 1.1 (including the statutes listed at 36 FR 306 following Secretary of Labor's Order No. 24-70) containing provisions for the payment of wages which are dependent upon determinations by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of Part 1 of Subtitle A of Title 29 of Code of Federal Regulations, Procedure for Predetermination of Wage Rates (37 FR 21138), and of Secretary of Labor's Orders 12-71 and 15-71 (36 FR 8755, 8756). The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in effective date as prescribed in that section, because the necessity to issue construction industry wage determination frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General Wage Determination Decisions are effective from their date of publication in the Federal Register without limitation as to time and are to be used in accordance with the provisions of 29 CFR, Parts 1 and 5. Accordingly, the ap-

plicable decision together with any modifications issued subsequent to its publication date shall be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR, Part 5. The wage rates contained therein shall be the minimum paid under such contract by contractors and subcontractors on the work.

**Modifications and Supersedeas Decisions to General Wage Determination Decisions.** Modifications and Supersedeas Decisions to General Wage Determination Decisions are based upon information obtained concerning changes in prevailing hourly wage rates and fringe benefit payments since the decisions were issued.

The determinations of prevailing rates and fringe benefits made in the Modifications and Supersedeas Decisions have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 1.1 (including the statutes listed at 36 FR 306 following Secretary of Labor's Order No. 24-70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of Part 1 of Subtitle A of Title 29 of Code of Federal Regulations, Procedure for Predetermination of Wage Rates (37 FR 21138), and of Secretary of Labor's Orders 13-71 and 15-71 (36 FR 8755, 8756). The prevailing rates and fringe benefits determined in foregoing General Wage Determination Decisions, as hereby modified, and/or superseded shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged in contract work of the character and in the localities described therein.

Modifications and Supersedeas Decisions are effective from their date of publication in the FEDERAL REGISTER without limitation as to time and are to be used in accordance with the provisions of 29 CFR, Parts 1 and 5.

Any person, organization, or governmental agency having an interest in the wages determined as prevailing is encouraged to submit wage rate information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Office of Special Wage Stand-

ards, Division of Wage Determinations, Washington, D.C. 20210. The cause for not utilizing the rule-making procedures prescribed in 5 U.S.C. 553 has been set forth in the original General Wage Determination Decision.

NEW GENERAL WAGE DETERMINATION  
DECISIONS

South Carolina----- AR-4046  
Texas ----- AR-68

MODIFICATIONS TO GENERAL WAGE  
DETERMINATION DECISIONS

The numbers of the decisions being modified and their dates of publication in the FEDERAL REGISTER are listed with each State.

Delaware:  
AR-2031 ----- Aug. 30, 1974  
Maryland:  
AR-2023 ----- Aug. 23, 1974  
AR-2050 ----- Sept. 6, 1974  
Ohio:  
AR-3036 ----- Aug. 23, 1974  
AR-3048 ----- Aug. 2, 1974  
Oklahoma:  
AR-15 ----- Aug. 16, 1974  
Pennsylvania:  
AQ-2046 ----- Mar. 8, 1974  
AQ-2081; AQ-2084 ----- Mar. 29, 1974  
AQ-2080; AQ-2083 ----- Apr. 5, 1974  
AQ-2085 ----- Apr. 19, 1974  
AQ-2121 ----- May 24, 1974  
AR-2004 ----- July 12, 1974  
South Carolina:  
AR-4008 ----- July 19, 1974  
Tennessee:  
AR-4036; AR-4036 ----- Sept. 13, 1974  
Texas:  
AR-36; AR-38; AR-42; AR-43 ----- Sept. 20, 1974  
AR-52; AR-53; AR-54 ----- Sept. 27, 1974  
Virginia:  
AR-2025 ----- Aug. 23, 1974  
Washington, D.C.:  
AR-2026 ----- Do.  
Wisconsin:  
AR-3146 ----- Sept. 27, 1974

SUPERSEDEAS DECISIONS TO GENERAL WAGE  
DETERMINATION DECISIONS

The numbers of the decisions being superseded and their dates of publication in the FEDERAL REGISTER are listed with each State. Supersedeas Decision numbers are in parentheses following the number of the decisions being superseded.

Michigan:  
AR-3105(AR-3164); AR-3119(AR-3165) ----- Aug. 16, 1974  
Pennsylvania:  
AQ-2066(AR-2046); AQ-2068(AR-2045) ----- Feb. 15, 1974  
Texas:  
AR-49(AR-69) ----- Sept. 27, 1974

Signed at Washington, D.C., this 11th day of October 1974.

RAY J. DOLAN,  
Assistant Administrator,  
Wage and Hour Division.

AR-4045 P. 2

NEW DECISION

STATE: South Carolina  
 COUNTY: See below  
 DATE: Date of Publication  
 DECISION NUMBER: AR-4045  
 DESCRIPTION OF WORK: Building Construction, (excluding single family homes and garden type apartments up to and including 4 stories).

10-SC-1-D	Fringe Benefits Payments			2 of 2
	H & W	Pensions	Vacation	App. Tr.
Basic Hourly Rates				
3.15				
4.20				
3.00				
4.50				
3.25				
2.76				
3.10				
2.80				
3.90				
3.50				
2.80				
3.20				
4.20				

Power Equipment Operators:  
 Air Compressor (portable)  
 Backhoe (rubber-tired)  
 Bulldozer, scraper pan  
 Grapes, derricks, draglines,  
 crawler, backhoe and piler/drive  
 Fork lift  
 Front end loader  
 Fireman  
 Light Conveyor  
 Mechanic  
 Motor grader  
 Oiler  
 Crawler  
 Truck Crane  
 Well point

## FOOTNOTES:

a. Holidays: A, C, D, E, and F  
 b. Holidays: C, D, E, and F.

PAID HOLIDAYS (WHERE APPLICABLE):  
 A-New Year's Day; B-Memorial Day;  
 C-Independence Day; D-Labor Day;  
 E-Thanksgiving Day; F-Christmas Day.

10-SC-1-D	Fringe Benefits Payments			1 of 2
	H & W	Pensions	Vacation	App. Tr.
Basic Hourly Rates				
5.70				
4.30				
4.00				
5.14				
5.70	.35	.25		.05
2.35				
2.45				
2.35				
2.50				
2.35				
2.35				
3.00				
3.25				
3.00				
4.35				
6.74				
3.15	.30	.20	a	
5.55	.20	.15	b	.02
2.35				

Mountains: Berkeley and  
 Charleston

Bricklayers  
 Carpenters  
 Cement Masons  
 Electricians  
 Ironworkers  
 Structural, Ornamental & Rein-  
 forcing  
 Laborers:  
 Unskilled  
 Air tool op. (jackhammer, vib.)  
 Mason Tenders  
 Mortar Mixers  
 Pipelayers  
 Plasterers Tenders  
 Painters:  
 Brush  
 Structural Steel  
 Spray  
 Plasterers  
 Plumbers & Steamfitters  
 Roofers  
 Sheet Metal Workers  
 Truck Drivers

Welders - receive rate prescribed  
 for craft performing operation to  
 which welding is incidental.

STATE: Texas

COUNTY: Howard

DATE: Date of Publication

DECISION NO.: AR-68

DESCRIPTION OF WORK: Building (including Residential) Construction.  
(See General Wage Determination AR-36 for Paving & Utilities incidental to Building Construction)

## NOTICES

DECISION NO. AR-68  
INCIDENTAL PAVING & UTILITIES  
& SITE PREPARATION  
(RESIDENTIAL CONSTRUCTION ONLY)

Basic Hourly Rates	Fringe Benefits Payments		
	H & W	Pensions	Vacation
Air Tool Man			
Asphalt Heaterman			
Asphalt Baker			
Asphalt Shoveler			
Batching Plant Scaleman			
Carpenter			
Carpenter Helper			
Concrete Finisher (Paving)			
Concrete Finisher Helper (Paving)			
Concrete Finisher (Structures)			
Concrete Finisher Helper (Structures)			
Electrician			
Form Builder (Structures)			
Form Builder Helper (Structures)			
Form Setter (Paving and Curb)			
Form Setter Helper (Paving & Curb)			
Form Setter (Structures)			
Form Setter Helper (Structures)			
Laborer, Common			
Laborer, Utility Man			
Mechanic			
Mechanic Helper			
Miller			
Service man			
Painter (Structures)			
Pipelayer			
Pipelayer Helper			
Pneumatic Mortarman			
Powderman			
Powderman Helper			
Reinforcing Steel Setter (Paving)			
Reinforcing Steel Setter (Structures)			
Reinforcing Steel Setter Helper			
Spreader Box Man			
Power Equipment Operators:			
Asphalt Distributor			
Asphalt Paving Machine			
Broom or Sweeper Operator			
Bulldozer, 150 HP and Less			
Bulldozer, over 150 HP			
Crane, Crawler, Backhoe, Derrick, Dragline, Shovel (less than 1 1/2 CY)			

Basic Hourly Rates	Fringe Benefits Payments		
	H & W	Pensions	Vacation
BRICKLAYERS			
CARPENTERS			
CEMENT MASONS			
ELECTRICIANS			
IRONWORKERS, STRUCTURAL & ORNAMENTAL			
LABORERS			
PAINTERS			
PLUMBERS			
ROOFERS			
SHEET METAL WORKERS			
TIE SETTERS			
TRUCK DRIVERS			

DECISION NO. AR-68

INCIDENTAL PAVING & UTILITIES  
& SITE PREPARATION  
(RESIDENTIAL CONSTRUCTION ONLY)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	App. Tr.
Power Equipment Operators (Cont'd)					
Crane, Clamshell, Backhoe, Ditcher, Dragline, Shovel (1½ CY & Over)	\$4.00				
Crusher or Screening Plant Operator	3.25				
Foundation Drill Operator (Truck Mounted)	4.95				
Foundation Drill Operator Helper	3.35				
Front End Loader (2½ CY and Less)	3.00				
Front End Loader (Over 2½ CY)	3.50				
Motor Grader Operator, Fine Grade	4.00				
Motor Grader Operator	3.75				
Roller, Steel Wheel (Plant-Mix Pavements)	3.10				
Roller, Steel Wheel (Other-Flat Wheel or Tamping)	2.50				
Roller, Pneumatic (Self-Propelled)	2.50				
Scrapers (17 CY and Less)	3.25				
Scrapers (Over 17 CY)	3.50				
Tractor (Crawler Type) 150 HP and Less	2.75				
Tractor (Crawler Type) over 150 HP	3.00				
Tractor (Pneumatic) 80 HP and Less	2.50				
Tractor (Pneumatic) over 80 HP	2.95				
Wagon Drill, Boring Machine or Post Hole Driller Operator	3.20				
Truck Drivers:					
Single Axle, Light	2.50				
Single Axle, Heavy	2.50				
Tandem Axle or Semitrailer	2.70				
Transit-Mix	3.00				
Weighman (Truck Scales)	2.50				
Welder	3.00				

Basic Hourly Rates	Fringe Benefits Payments				App. Tr.
	H & W	Pensions	Vacation		
DECISION #AR-2031 - Mod. #3 (39 FR 31787 - August 30, 1974) Statewide, Delaware  Change: Cement Masons Sprinkler Fitters	\$8.20 9.60	.68 .50	.62 .70		.08
DECISION #AR-2023 - Mod. #2 (39 FR 30761 - August 23, 1974) Baltimore City and Baltimore County, Maryland  Change: Electricians Ironworkers: Ironworkers, finishers, rodmen, pre-cast & pre-stress erectors Sheeters Sprinkler Fitters - excluding Baltimore City	\$ 8.80  8.47 8.72 9.40	.50  .60 .60 .50	1 1/4%.20  1.05 1.05 .70		1/2%  .04 .04 .08
DECISION #AR-2050 - Mod. #2 (39 FR 32451 - September 6, 1974) Anne Arundel County, Maryland  Change (Building & Heavy Const): Electricians Ironworkers: Structural, ornamental, rodmen, finishers, pre-cast & pre-stress erectors Sheeters Sprinkler Fitters Terrazzo Workers & Tile Setters Helpers - The D. C. Training School	8.80  8.47 8.72 9.40 7.59	.50  .60 .60 .50 .40	1 1/4%.20  1.05 1.05 .70 .40		1/2%  .04 .04 .08

Orlit:  
Footnote - f

Basic Hourly Rates	Fringe Benefits Payments				App. Tr.
	H & W	Pensions	Vacation		
DECISION #AR-2036 - Mod. #1 (39 FR 30780 - August 23, 1974) Franklin, Madison & Pickaway Counties, Ohio.  Add: Electricians, Residential	\$6.00	.28	1%		.03
DECISION #AR-2048 - Mod. #3 (39 FR 27992 - August 2, 1974) Statewide, Ohio  Change: Power Equipment Operators Zone I - Columbiana, Mahoning and Trumbull Counties Class V	\$ 8.21	.50	.50		.12
DECISION NO. AR-15 - Mod. #4 (39 FR 29907 - August 16, 1974) Oklahoma, Cleveland, Canadian, Lincoln and Pottawatomie Counties, Oklahoma  Change: Laborers (Oklahoma, Canadian, Lincoln, Cleveland and Pottawatomie Counties): Unskilled laborers Air tool operator (jackhammer, vibrator), mason tenders; mortar mixers; pipelayers (concrete and clay); plasterers tenders	\$5.50  5.70	.10  .10	.15  .15		

Basic Hourly Rates	Fringe Benefits Payments				App. Tr.
	H & W	Pensions	Vacation		
<u>DECISION #A0-2081 - Mod. #3</u> (39 FR 11805 - March 29, 1974) Cambria County, Pennsylvania <u>Change:</u> Amboston Workmen Plasterers Laborers Laborers Plasterers tenders Plasterers Plumbers & Steamfitters Roofers	\$9.92 8.15 6.38 6.43 6.98 9.32 9.41	.35 .40 .40 .40 .65 .57	.70 .10 .10 .10 .65 1.30	.01 .19 .06	
<u>DECISION #A0-2080 - Mod. #3</u> (39 FR 12571 - April 5, 1974) Lebanon County, Pennsylvania <u>Change:</u> Carpenters Tenant Farmers East of Route 501 Elevator Constructors Elevator Constructors helpers Elevator Constructors helpers (prob.) Millwrights Painters East of Route 72 Brush Structural Steel & Spray Highway Bridges Plasterers East of Route 501 Pile-drivers	8.13 8.86 8.41 5.89 4.205 9.16 7.44 8.49 8.89 8.90 9.92	.25 .39 .39 .25 .25 .50 .50 .50 1.28	.35 .28 .26 .26 .35 .31 .31 .31 .28 .90	.02 .02 .02 .02 .02 .01 .07	214-4b10 214-4b10

Basic Hourly Rates	Fringe Benefits Payments				App. Tr.
	H & W	Pensions	Vacation		
\$9.92	.35	.70			
8.92	.5%	.7%	.6%		.4 of 1%
6.38	.40	.40			
6.43	.40	.40			
6.98	.40	.40			
6.73	.40	.40			
6.88	.40	.40	.30		.04
8.00	.40	.35			.01
9.18	.52	.50			.06
9.41	.57	1.30			

Basic Hourly Rates	Fringe Benefits Payments			App. Tr.
	H & W	Pensions	Vacation	
DECISION #AQ-2085 - Mod. #3 (39 FR 14115 - April 19, 1974) Warren County, Pennsylvania  Change: Asbestos Workers Electricians Ironworkers Laborers (See Below)	9.21 10.20 9.15	.67 3% .78	.55 3% .69	.02 1/2 of 1% .13
DECISION #AQ-2121 - Mod. #3 (39 FR 18398 - May 24, 1974) Forrest & McKean Counties, Pennsylvania  Change: Asbestos Workers: McKean County Roofers: Forest County Electricians Forest County Ironworkers: Forest County Laborers (See Below)	9.21 9.41 10.20 9.15	.67 .57 3% .78	.55 1.30 3% .69	.02 .06 1/2 of 1% .13

Basic Hourly Rates	Fringe Benefits Payments			App. Tr.
	H & W	Pensions	Vacation	
DECISION #AQ-2084 - Mod. #4 (39 FR 11808 - March 29, 1974) Bedford County, Pennsylvania  Change: Asbestos Workers Laborers: Laborers Ditch, trench or sumpwork exceeding 10' in depth including caissons Blasters Air track man, demolition of chimneys & erection of tower (on power plants) or other similar work in excess of 10' in height, suspension of workmen in swinging-cages, suspended scaffolds, swings, bosun's chair Plasterers tenders Plasterers Roofers Sheet metal workers Plumbers & Steamfitters	9.92 6.23 6.58 6.83  6.73 6.28 8.15 9.41 9.18 8.00	.35 .40 .40 .40  .40 .40 .57 .52 .40	.70 .40 .40 .40  .40 .40 1.30 .50 .35	.01 .06 .01 .04

## MODIFICATIONS P.8

## MODIFICATIONS, p. 7

## Trucks Drivers!

DECISION #AR-2004 -- Mod. #2  
(39 FR 25899 - July 12, 1974)  
Montgomery County, Pennsylvania

Change:

Painters:  
Pottstown, Pottsgrove, New  
Hanover and Douglass  
Brush  
Steel and Spray  
Rollers

Consent Menans:  
Pottsburgh & Pottstown

Plasterers:  
Pottsburgh

Basic Hourly Rates	Fringe Benefits Payments				App. Tr.
	H & W	Pensions	Vacation		
<p><u>DECISION #AR-2004 - Mod. #2</u>            (39 FR 25899 - July 12, 1974)            Montgomery County, Pennsylvania</p> <p><u>Change:</u>            Painters:              Pottstown, Pottsgrove, New              Havener and Douglas              Brush              Steel and Spray              Rollers              Conent Masons:              Pennsbush &amp; Pottstown            Plasterers:              Pennsburg</p>	<p>\$7.44            8.49            7.44            .50            .50            .50            .28            8.90</p>	<p>.31            .31            .31            .50            .50            .50            .28</p>			.01
<p><u>DECISION #AO-2016 - Mod. #14</u>            (39 FR 9338 - March 8, 1974)            Elk County, Pennsylvania</p> <p><u>Change:</u>            Asbestos Workers            Roofers            Laborers (See Below)</p>	<p>9.92            9.41</p>	<p>.35            .57</p>	<p>.70            1.30</p>		.06

DECISION #A9-2016 - Mod. #4  
(39 FR 9338 - March 8, 1974)  
Elk County, Pennsylvania

Change:  
Ambassadors Workroom  
Roofers  
Laborers (See Below)

Decision No. AQ-2046 (Mod. #4 Cont'd)

## BUILDING CONSTRUCTION

## Laborers:

Common laborer, carpenter tender, scaffold builder for masons, window cleaner, form stripper and mover, scaffold and runways, building materials handlers (loading and unloading), concrete pitter, puddler, mason tender. Mechanical tappers (power) powered wheelbarrows and buggies & work-lifts, sweepers and similar, mortar mixer, bell bottom man on furnaces and stacks, jackhammer man, concrete buster, wagon drill helper, concrete saw operator, blaster's helper, drill runner's helper (includes drill mounted truck, track or similar) sheeters and shores, vibrator operators, power tapper operators, y-gun, burner-cutting torch, carryable pumps, chain saw operator, pipe layers, all material conveyors and elevators, signal man, walk behind fork lift or similar, whacker, sand blaster, maintenance man, west brick buggies or similar, scaffold builder for plasterers' regardless of height, hod carrier, plaster tender, form cleaning machine operator, plaster applying and/or pump machine operator, paving breaker, asphalt raker, lancer, barfix cutting tool, gunnite potman blacksmith, tool dresser (cable tools)

Basic Hourly Rates	Fringe Benefits Payments				
	H & W	Pensions	Vacation	App. Tr.	Others
7.02	.40	.40			$\frac{1}{2}\%$
7.27	.40	.40			$\frac{1}{2}\%$
7.82	.40	.40			$\frac{1}{2}\%$

Basic Hourly Rates	Fringe Benefits Payments				
	H & W	Pensions	Vacation	App. Tr.	Others
DECISION #AR-1008 - Mod. #1. (39 FR 26555 - July 19, 1974) Aiken, Barnwell, & Edgefield Counties, South Carolina Change: Painters, brush	.20				
DECISION #AR-4035 - Mod. #2 (39 FR 33191 - September 13, 1974) Hamilton County, Tennessee Change: Lathers Omit: Electricians and linemen Cable splicers Add: Electricians: Electricians Cable splicers	.40 .40	1% 1%			1% 1%
DECISION #AR-4036 - Mod. #2 (39 FR 33193 - September 13, 1974) Shelby County, Tennessee Change: Carpenters; Paledrivers; Soft floor layers Omit: Electricians: Electricians; Linemen Cable splicers Add: Electricians: Electricians Cable splicers	.30 .35 .35 .35	.20 1%+.40 1%+.40			.04 .5% .5% .5% .5%

Basic Hourly Rates	Fringe Benefits Payments			App. Tr.
	H & W	Pensions	Vacation	
<u>DECISION #AR-36 - Mod. #2</u> (39 FR 33992 - September 20, 1974) Statewide (excluding Dallas- Port Worth Regional Airport), Texas				
Change Description of Work for Zone 15 to Read: Heavy (excluding work per- formed on the site of water or sewage treatment facilities in Galveston County, tunnels & dams), & Highway Construc- tion, Incidental Shore Work and Paving & Utilitie Incidental to General Build- ing Construction (excluding Galveston Island). This wage determination does not apply to any residential con- struction (single family homes & garden type apart- ments up to & including 4 stories).				
\$6.09	.27	.30		.02
6.65				
5.89	.40	.40		.04
5.04	.40	.40		.04
6.09	.27	.30		.02
9.05	.50	.70		.08
6.45	.18	.45		
5.675	.18	.45		
5.075	.18	.45		
5.225	.18	.45		
<u>DECISION #AR-38 - Mod. #2</u> (39 FR 34030 - September 20, 1974) Kleberg & Nueces Counties, Texas				
Change: Carpenters: Carpenters Cement masons Ironworkers: Structural; Ornamental Reinforcing Soft floor layers Sprinkler fitters Power Equipment Operators: Group 1 Group 2 Group 3 Group 4				

Basic Hourly Rates	Fringe Benefits Payments			App. Tr.
	H & W	Pensions	Vacation	
DECISION #AR-42 - Mod. #2 (39 FR 34007 - September 20, 1974) Travis County, Texas				
Change:				
Bricklayers & stonemasons	.35	.30		.03
Cement masons	.30	.10		.12
Ironworkers	.55	.60		
Laborers:				
General laborer & pier hole men	.275	.20		.02
Mason tender; Pipelayer (concrete & clay); Cement finisher tender; Scaffold builder; Gunite & cement work mixer & power tool operator	.275	.20		.02
Plaster tender; Mud carrier; Mortar mixer; Lather tender; Water or damp proofers	.275	.20		.02
Gunite over 1 1/2" thick; Nozzle man; Machine operator; Powderman & blaster	.275	.20		.02
Sprinkler fitters	.50	.70		.08
DECISION #AR-43 - Mod. #2 (39 FR 34009 - September 20, 1974) Collin, Dallas, Denton, Ellis, Grayson, Hood, Hunt, Johnson, Kaufman, Palo Pinto, Parker, Rockwall, Tarrant & Wise Counties, Texas				
Change:				
Electricians:				
Zone 1:	.30	1%		.03
Electricians	.50	.70		.08
Sprinkler fitters				

DECISION #AR-54 - Mod. #1 (39 FR 35071 - September 27, 1974) Bell, Bosque, Coryell, Falls, Hill & McLennan Counties, Texas	Basic Hourly Rates	Fringe Benefits Payments			App. Tr.
		H & W	Pensions	Vacation	
Change: Building Construction: Bricklayers Carpenters: Zone 2 Millwrights: Zone 1 Ironworkers Plumbers & pipefitters: Zone 1 Zone 2 Sprinkler fitters Incidental Paving & Utilities (Bell & Coryell Counties): Plumbers: Zone 1 Zone 2	\$7.45  6.84 7.24 7.49  7.50 7.90 9.05  7.50 7.90	  .18 .18 .55  .50	.25  .60  .70		.03  .12 .02 .02 .08  .02 .02

DECISION #AR-52 - Mod. #2 (39 FR 35066 - September 27, 1974) Armstrong, Carson, Castro, Childress, Collingsworth, Dallam, Deaf Smith, Donley, Gray, Hansford, Hartley, Hemphill, Hutchinson, Lipscomb, Moore, Ochiltree, Oldham, Potter, Randall, Roberts, Sherman, Swisher & Wheeler Counties, Texas	Basic Hourly Rates	Fringe Benefits Payments			App. Tr.
		H & W	Pensions	Vacation	
Change: Bricklayers & stonemasons Carpenters: Zone 1: Carpenters Millwrights Cement masons Machine operators Ironworkers Sprinkler fitters	\$8.05  7.75 8.00 7.05 7.30 7.50 9.05	     .55 .50	.20     .50 .70		.10 .08
DECISION #AR-53 - Mod. #2 (39 FR 35069 - September 27, 1974) Armstrong, Carson, Castro, Childress, Collingsworth, Dallam, Deaf Smith, Donley, Gray, Hansford, Hartley, Hemphill, Hutchinson, Lipscomb, Moore, Ochiltree, Oldham, Potter, Randall, Roberts, Sherman, Swisher & Wheeler Counties, Texas	8.05 7.75 7.05		.20		
Change: Bricklayers Carpenters Cement masons					

MODIFICATIONS P. 15

MODIFICATIONS P. 16

Basic Hourly Rates	Fringe Benefits Payments				App. Tr.
	H & W	Pensions	Vacation		
DECISION #AR-2025 - Mod. #3 (39 FR 30763 - August 23, 1974) Montgomery and Prince Georges Counties, Maryland; Arlington and Fairfax Counties, the City of Alexandria and Dullon International Airport, Virginia					
9.03	.56	.40			.05
6.00	.30	.25			.03
10.10	.35	.30			
9.45	.50	.70			.08
10.10	.35	.35			
7.59	.40	.40			
Omit: Footnote - a.					
DECISION #AR-2026 - Mod. #3 (39 FR 30814 - August 23, 1974) Washington, D. C.					
\$ 9.03	.56	.40			.05
6.00	.30	.25			.03
10.10	.35	.30			
9.45	.50	.70			.08
10.10	.35	.35			
7.59	.40	.40			
Omit: Footnote - a.					

Basic Hourly Rates	Fringe Benefits Payments				App. Tr.
	H & W	Pensions	Vacation		

## NOTICES

SUPERSEDES DECISION

STATE: Michigan  
DECISION NUMBER: AR-3164

COUNTY: Berrien

DATE: Date of Publication  
Supersedes Decision No. AR-3105 dated August 16, 1974 in 39 FR 29793.  
DESCRIPTION OF WORK: Building Construction, (Excluding single family homes and garden type apartments up to and including 4 stories), and Heavy Const.

11-Michigan F 1 of 2

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	App. Tr.
Building and Heavy Construction					
Asbestos workers	\$ 9.625	.30	.15		.01
Boilermakers	8.83	.60	1.00	1.00	
Bricklayers and stonemasons	9.05	.40	.35		
Carpenters and soft floor layers:					
Chickaming, Three Oaks & New Buffalo	8.66	.50	.40		.02
Remainder of County	8.40	.40	.35		.01
Cement masons	8.25	.40	5%		.2%
Electricians	8.99	2.8%		2.5%+a+b	.02
Elevator constructors	8.46	.39	.26	2.5%+a+b	.02
Elevator constructors' helpers	70%JR	.39	.26	4%	.5%
Elevator constructors' helpers (prob.)	50%JR				
Glaziers	7.25	.35			
Ironworkers, structural, ornamental and reinforcing					
Lathers	9.05	.55	.65		.01
Lead burners	7.65	.44	.10	.50	.01
Marble setters	8.75	.30		c	
Painters, brush	7.65	.20	.25		
Piledriverment	7.63		.20		
Chickaming, Three Oaks and New Buffalo	8.66	.40	.40		.02
Remainder of County	8.80	.50	.40		.01
Plasterers	8.45	.40	.35		
Plumbers and steamfitters:					
Niles	8.65	.32	.40		.10
Remainder of County	9.85	.45	.50		
Roofers:					
Composition, damp & waterproof	8.50		.30		.03
Slate, tile and asbestos	8.65		.30		.03
Slate and tile helpers	5.00		.30		
Sheet metal workers	8.45	.48	.50		.08
Sprinkler fitters	9.50	.50	.70		
Terrazzo workers	7.65	.35	.05		
Tile setters	7.65	.35	.05		
Welders - receive rate prescribed for craft performing operation to which welding is incidental.					

AR-3164 P. 2 11 - Michigan F 2 of 2

PAID HOLIDAYS (Where Applicable):  
A-New Year's Day; B-Memorial Day; C-Independence Day;  
D-Labor Day; E-Thanksgiving Day; F-Christmas Day.

## FOOTNOTES:

- a. Six paid holidays: A through F.
- b. Employer contributes 4% of regular hourly rate to vacation pay credit for employee who has worked in business more than 5 years. Employer contributes 2% of regular hourly rate to vacation pay credit for employee who has worked in business less than 5 years.
- c. Nine paid holidays, A through F plus Washington's Birthday Christmas Eve and Good Friday, providing employee has worked 45 full days during the 120 calendar days prior to the holiday, and the regular scheduled work days immediately preceding and following the holiday.

	Basic Hourly Rates	Fringe Benefits Payments			App. Tr.
		H & W	Pensions	Vacation	
LABORERS:					
Class A	\$ 6.50	.40	.30		.04
Class B	6.65	.40	.30		.04
Class C	6.75	.40	.30		.04
Class D	6.62	.40	.30		.04
Class E	6.72	.40	.30		.04
Class F	6.82	.40	.30		.04
Class G	7.00	.40	.30		.04

## CLASSIFICATIONS

Class A Laborers

Class B Plasterer tenders, material mixers, operators of portable mixers, air electric, or gasoline tools and motor driven buggies and swing scaffolds

Class C Jackhammer Operator

Class D Signal men, and toymen on sewer &amp; caisson construction open cut

Class E Windlass operators on caisson work

Class F Crock layer or pipelayer &amp; caisson workers

Class G Toymen on chimneys or towers over 30 feet in height

AR-3164 P. 3

## Michigan Line Construction Zone 2

Line Construction	Fringe Benefits Payments			
	Basic Hourly Rates	H & W	Pensions	Vacation
Line Construction	\$ 7.88	.35	1%	a
Lineman & Heavy Equipment Op.	8.21	.35	1%	a
Cable Splicer				
Comb. Digger Op. - Tractor Op.				
Groundman				
1st Six Months	5.73	.35	1%	a
Over Six Months	6.18	.35	1%	a
Tight Equipment Op. - Groundman				
1st Six Months	4.99	.35	1%	a
Over Six Months	5.43	.35	1%	a
Distribution Line Truck Driver				
Operator Groundman				
1st Six Months	4.99	.35	1%	a
Over Six Months	5.43	.35	1%	a
Comb. Winch Truck Driver Groundman				
1st Six Months	4.55	.35	1%	a
Over Six Months	5.19	.35	1%	a
Comb. Truck Driver - Groundman	4.40	.35	1%	a

## FOOTNOTES:

a. 7 paid holidays: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, the Day after Thanksgiving Day, & Christmas Day.

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## Michigan-3-PEO M

POWER EQUIPMENT OPERATORS: BUILDING & HEAVY	Fringe Benefits Payments			
	Basic Hourly Rates	H & W	Pensions	Vacation
CLASS A	\$ 9.70	.50	.55	
CLASS B	9.45	.50	.55	
CLASS C	9.20	.50	.55	
CLASS D	9.00	.50	.55	
CLASS E	7.95	.50	.55	
CLASS F	7.25	.50	.55	

## CLASSIFICATIONS

CLASS A Crane with main boom & jib 220' or longer

CLASS B Crane with main boom and jib 140' or longer, up to 220', tower cranes, gantry cranes, whirley derrick

CLASS C Regular equipment operator, crane, stiff leg derrick, scraper, dozer, grader, front end loader, hoist, job mechanic and head crane man

CLASS D Pumps 6" or over, well points & freeze systems, air tugger (single drum), material hoist (buck type)

CLASS E Engineers when operating air compressor, welding machine, generators, conveyors, pumps under 6" and crane man

CLASS F Fireman, oiler and heater operator

Underground Construction.	Basic Hourly Rates	Fringe Benefits Payments			App. Tr.
		H & W	Pensions	Vacation	
POWER EQUIPMENT OPERATORS:					
CLASS I	\$ 9.79	.55	.75		.05
CLASS II	9.66	.55	.75		.05
CLASS III	8.93	.55	.75		.05
CLASS IV	8.36	.55	.75		.05
CLASS V	8.36	.55	.75		.05

CLASSIFICATIONS

CLASS I Power shovels, crane (crawler), truck type or pile driving, dragline, backhoe, clamshell, trencher (over 8' digging capacity), mechanic, end loader (over 1-1/2 cu. yd. cap.), grader, scraper (self-propelled or tractor drum), dozer (9' blade & over), concrete paver (2 drum or larger), side boom tractor type D-4 or equivalent & larger), elevating grader, roller (asphalt), gradall (and similar type machine), batch plant operator (concrete), backfiller tamper, well drilling slip form paver, slope paver, conveyor loader (euclid type)

CLASS II Trencher (8' digging capacity & smaller), endloader (1-1/2 cu. yd. capacity & smaller), dozer (less than 9' blade), side boom tractor (smaller) than D-4 or equivalent), pump (1 or more 6" discharge or larger - gas or diesel powered or powered by generator of 300 amps or more - inclusive of generator), hoist, boom truck (power swing type boom), tractor (pneu-tired, other than backhoe or front endloader), crusher

CLASS III Air compressors (2 or more - less than 600 CFM), air compressors (600 cu. ft. per min. or larger), pumpcrete machine (and similar equipment), mechanic helper, maintenance man, boom truck (non-swinging, non-powered type boom), welding machine or generator (2 or more - 300 amp. or larger gas or diesel powered), pump (2 or more - 4" up to 6" discharge gas or diesel powered - excluding submersible pumps), concrete mixer drum 1/2 yd. or larger), wagon drill (multiple), elevator (other than passenger), concrete breaker (self-propelled or truck-mounted - includes compressor)

CLASS IV Hydraulic pipe pushing machine, pumps (2 or more up to 1/4" discharge if used 3 hrs. or more a day - gas or diesel powered - excluding submersible pumps), trencher (service), boiler, vibrating compaction equipment, self-propelled (6' wide or over), stump remover, mulching equipment, farm tractor, (with attachment), finishing machine (concrete), roller (other than asphalt), curing machine (self-propelled), concrete saw (40 hp. or over)

CLASS V Oilier & fireman

POWER EQUIPMENT OPERATORS STEEL ERECTION	Basic Hourly Rates	Fringe Benefits Payments			App. Tr.
		H & W	Pensions	Vacation	
CLASS A	\$10.05	.50	.55		.05
CLASS B	9.80	.50	.55		.05
CLASS C	9.55	.50	.55		.05
CLASS D	9.35	.50	.55		.05
CLASS E	8.30	.50	.55		.05
CLASS F	7.25	.50	.55		.05

CLASSIFICATIONS

CLASS A Crane operator with main boom & jib 220' or longer

CLASS B Crane operator with main boom & jib 140' or longer, up to 220', tower cranes, gentry crane, whirley derrick

CLASS C Regular equipment operator, crane, dozer, loader, hoist, straddle wacer, job mechanic

CLASS D Air tugger (single drum), material hoist, pump 6" or over

CLASS E Air compressor, welder, generators, conveyors

CLASS F Oilier and fireman

## SUPERSEDED DECISION

STATE: Michigan  
 COUNTY: St. Clair & Sanilac  
 DATE: Date of Publication  
 DECISION NUMBER: AR-3165  
 SUPERSEDED DECISION NO. AR-3119, dated August 16, 1974 in 39 FR 29840  
 DESCRIPTION OF WORK: Building Construction (Including Residential in St. Clair County) and Heavy Construction.

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	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Families	Vacation	App. Tr.
Building and Heavy Construction					
Asbestos workers, Sanilac Co.	\$ 9.31	.66	.95		.02
Asbestos workers, St. Clair Co.	10.32	.64	1.06		
Boilermakers	8.83	.60	1.00	1.00	.01
Bricklayers & Stonemasons	9.27	.56	.37	.56	
Carpenters & Piledrivers	8.7034	.60	.82	10%	.02
Concrete masons	8.70	.56	.37	.56	
Electricians	9.12	.75+.10	.65+.09	.91	.06
Elevator constructors:					
St. Clair County	9.825	.39	.26	2.5%+.25	.02
Sanilac County	8.85	.39	.26	2.5%+.25	.02
Elevator constructors' helpers	70%AR	.39	.26	2.5%+.25	.02
Elevator constructors' helpers (prob.)	50%AR				
Glaziers	8.15	.50	.40		
Ironworkers: Structural, ornamental & reinforcing	8.17	8%	13%	16%	.04
Lathers:					
Sanilac and Northern portion of St. Clair Co.	7.65	.44	.10	.50	.01
Lathers, Southern portion of St. Clair Co.	7.79	.27	.10	.25	.01
Lead burners	8.75	.30			.01
Marble cutters	9.65	.35	.50		
Marble cutters' helpers	8.18	.30	.30		
Painters:					
Brush, preparatory work	8.35	.42	.30		.02
Ladder work over 40' mixing stage	8.85	.42	.30		.02
Spray work under 40'	8.85	.42	.30		.02
Spray work 40' and over	9.30	.42	.30		.02
Steeply Jack 40' and over	9.90	.42	.30		
Plumbers	8.50	.56	.37	.56	
Plumbers' helpers	9.77	.55	.35		
Roofers:					
Roofers	6.35				
Roofers' helpers	5.80				
Sheet metal workers	8.44	.38	.6%	10%	.02
Soft floor layers					
St. Clair Co.	7.88	.50	.51	.63	.03
Sanilac Co.	8.03	.50	.40	.56	.01
Sprinkler fitters	9.65	.50	.70		.08
Steamfitters	9.77	.55	.35		
Terrazzo workers:					
Terrazzo workers	9.02	.35	.50		
Terrazzo workers' helpers & grinder					
Tile cutters	7.36	.30	.10	.25	
Tile cutters' helpers	9.31	.35	.50		
	8.95	.35	.55		

Welders receive rate prescribed for craft performing operation to which welding is incidental.

PAYD HOLIDAYS: (WHERE APPLICABLE)  
 A-New Year's Day; B-Memorial Day; C-Independence Day;  
 D-Labor Day; E-Thanksgiving Day; F-Christmas Day.

FOOTNOTES:

b. Six paid holidays: A through F.

c. Employer contributes 1/8% of regular hourly rate to vacation pay credit for employee who has worked in business more than 5 years. Employer contributes 2% of regular hourly rate to vacation pay credit for employee who has worked in business less than 5 years.

d. Nine paid holidays, A through F plus Washington's Birthday, and Christmas Eve and Good Friday, providing employee has worked 45 full days during the 120 calendar days prior to the holiday, and the regular scheduled work days immediately preceding and following the holiday.

TRUCK DRIVERS:

Pole trailers, low boys, straddle carriers, double bottoms and special load permits drivers

Semi drivers

All other trucks

PAYD HOLIDAYS: (WHERE APPLICABLE)

A-New Year's Day; B-Memorial Day; C-Independence Day;  
 D-Labor Day; E-Thanksgiving Day; F-Christmas Day

FOOTNOTES:

a. Per week, per employee

b. 6 paid holidays for employees who have acquired seniority A-F

c. Vacation pay: Less than 3 years, 4 hours of basic straight time pay per month. Three to ten years 8 hours of basic straight time per month. Ten years to 15 years, 12 hours of basic straight time per month. Over 15 years, 16 hours of basic straight time pay per month.

## LABORERS

## St. Clair and Sanilac Counties

Group 1  
Laborers, mason tenders, demolition,  
furnace battery heater helpers

Group 2  
Signal men and top men on sewer, water  
and caisson work (open cut work)

Group 3  
Nortix mixers hand or machine

Group 4  
Plasterer tenders, hot dope carriers,  
tar kettle tenders, gasoline vibrators,  
concrete gas buggies, concrete saw Op.

Group 5  
Air, electric and gas tool operators

Group 6  
Tunnel men, concrete shovelers, car  
pushers, bottom men (on sewer & water),  
Windlass and tugger Ops. (on caisson  
work)

Group 7  
Crock or pipe layers, caisson workers,  
muckers

Group 8  
Minors

## Mich. 6 LAB M

Basic Hourly Rates	Fringe Benefits Payments			App. Tr.
	H & W	Pensions	Vacation	
\$7.25	.30	.20	.35	
7.35	.30	.20	.35	
7.37	.30	.20	.35	
7.42	.30	.20	.35	
7.50	.30	.20	.35	
7.54	.30	.20	.35	
7.61	.30	.20	.35	
7.80	.30	.20	.35	

## Michigan 1 - FEO N 1 of 1

BASIC HOURLY RATES	FRINGE BENEFITS PAYMENTS			APP. TR.
	H & W	PENSIONS	VACATION	
\$9.3022	.50	.55	10%	.05
9.0622	.50	.55	10%	.05
8.8122	.50	.55	10%	.05
7.9862	.50	.55	10%	.05
7.3622	.50	.55	10%	.05

## St. Clair County

## POWER EQUIPMENT OPERATORS:

Crane with boom & jib or leads 220'  
or longer

Crane with boom and jib or leads 110'  
or longer, up to 220'

Engineer

Engineers when operating compressor  
or welding machine

Fireman or oiler

## Sanilac County

## Line Construction

Linemen & Heavy Equipment Op.  
Cable Splicer  
Comb. Digger Op. - Tractor Op.  
Groundman  
1st Six Months  
Over Six Months  
Light Equipment Op. - Groundman  
1st Six Months  
Over Six Months  
Distribution Line Truck Driver  
Operator Groundman  
1st Six Months  
Over Six Months  
Comb. Winch Truck Driver Groundman  
1st Six Months  
Over Six Months  
Comb. Truck Driver - Groundman

## FOOTNOTES:

a. 7 paid holidays: New Year's  
Day, Memorial Day, Independence  
Day, Labor Day, Thanksgiving  
Day, the Day after Thanksgiving  
Day, & Christmas Day.

Basic Hourly Rates	Fringe Benefits Payments			App. Tr.
	H & W	Pensions	Vacation	
\$ 7.88 8.21	.35 .35	1% 1%	a a	.25% .25%
5.73 6.18	.35 .35	1% 1%	a a	.25% .25%
4.99 5.43	.35 .35	1% 1%	a a	.25% .25%
4.99 5.43	.35 .35	1% 1%	a a	.25% .25%
4.55 5.19	.35 .35	1% 1%	a a	.25% .25%
4.40	.35	1%	a	.25%

## Michigan Line Construction Zone 1

Basic Hourly Rates	Fringe Benefits Payments			App. Tr.
	H & W	Pensions	Vacation	
\$ 9.96 10.39 8.04 7.59 7.00	.85 .85 .85 .85 .85	3.4% 3.4% 3.4% 3.4% 3.4%	10% 10% 10% 10% 10%	.25% .25% .25% .25% .25%

## St. Clair County

## Line Construction:

Linemen & Technicians  
Cable Splicer & Helio Arc Welder  
Comb. Equipment Op. & Groundman  
Comb. Driver & Groundman  
Groundman

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Sanilac County

St. Clair and Sanilac Counties  
POWER EQUIPMENT OPERATORS  
STEEL ERECTION

Michigan 3-PEO M

POWER EQUIPMENT OPERATORS:  
BUILDING & HEAVYCLASS A  
CLASS B  
CLASS C  
CLASS D  
CLASS E  
CLASS F

Basic Hourly Rates	Fringe Benefits Payments			App. Tr.
	H & W	Pensions	Vacation	
\$ 9.70	.50	.55		.05
9.45	.50	.55		.05
9.20	.50	.55		.05
9.00	.50	.55		.05
7.95	.50	.55		.05
7.25	.50	.55		.05

## CLASSIFICATIONS

- CLASS A Crane with main boom & jib 220' or longer
- CLASS B Crane with main boom and jib 140' or longer, up to 220', tower cranes, gantry cranes, whirley derrick
- CLASS C Regular equipment operator, crane, stiff leg derrick, crawler, dozer grader, front end loader, hoist, job mechanic and head grease man
- CLASS D Pumps 6" or over, well points & freeze systems, air tugger (single drum), material hoist (buck type)
- CLASS E Engineers when operating air compressor, welding machine, generators, conveyors, pumps under 6" and grease man
- CLASS F Fireman, oiler and heater operator

BASIC HOURLY RATES	FRINGE BENEFITS PAYMENTS			
	H & W	PENSIONS	VACATION	OTT
\$11.41	.50	.55	10%	.05
11.12	.50	.55	10%	.05
11.12	.50	.55	10%	.05
10.61	.50	.55	10%	.05
10.45	.50	.55	10%	.05
9.64	.50	.55	10%	.05
8.54	.50	.55	10%	.05

Engineer operating combination of  
boom & jib 220' or longerEngineer operating combination of  
boom & jib 140' or longer, up to 220'Tower-crane & derrick operator (work  
station 50' or more above 1st sub-  
level)

Crane operator &amp; job mechanic

Hoisting engineers

Compressor or welder operator

Oiler or fireman

## Michigan 8 PEO X

St. Clair and Sanilac Counties

Underground Construction.

POWER EQUIPMENT OPERATORS:

CLASS I

CLASS II

CLASS III

CLASS IV

CLASS V

	Basic Hourly Rates	Fringe Benefits Payments			App. Tr.
		H & W	Pensions	Vocation	
	\$ 9.79	.55	.75		.05
	9.66	.55	.75		.05
	8.93	.55	.75		.05
	8.36	.55	.75		.05

## CLASSIFICATIONS

CLASS I Power shovels, crane (crawler, truck type or pile driving), dragline, backhoe, clamshell, trencher (over 8' digging capacity), mechanic, end loader (over 1-1/2 cu. yd. cap.), grader, scraper (self-propelled or tractor drawn), dozer (9' blade & over), concrete paver (2 drum or larger), side boom tractor type D-4 or equivalent & larger), elevating grader, roller (asphalt), gradall (and similar type machine), batch plant operator (concrete), backfiller tamper, well drilling slip form paver, slope paver, conveyor loader (euclid type)

CLASS II Trencher (8' digging capacity & smaller), end loader (1-1/2 cu. yd. capacity & smaller), dozer (less than 9' blade), side boom tractor (smaller) than D-4 or equivalent), pump (1 or more 6" discharge or larger - gas or diesel powered or powered by generator of 300 amps or more - inclusive of generator), hoist, boom truck (power swing type boom), tractor (pneum-tired, other than backhoe or front end loader), crusher

CLASS III Air compressors (2 or more - less than 600 CFM), air compressors (600 cu. ft. per min. or larger), pumpcrete machine (and similar equipment), mechanic helper, maintenance man, boom truck (non-swinging, non-powered type boom), welding machine or generator (2 or more - 300 amp. or larger gas or diesel powered), pump (2 or more - 1/2" up to 6" discharge gas or diesel powered - excluding submersible pumps), concrete paver (drum 1/2 yd. or larger), wagon drill (multitype), elevator (other than passenger), concrete breaker (self-propelled or truck-mounted - includes compressor)

CLASS IV Hydraulic pipe pushing machine, pumps (2 or more up to 1" discharge if used 3 hrs. or more a day - gas or diesel powered - excluding submersible pumps), trencher (service), boiler, vibrating compaction equipment, self-propelled (6' wide or over), stump remover, mulching equipment, farm tractor (with attachment), finishing machine (concrete), roller (other than asphalt), curing machine (self-propelled), concrete saw (40 hp. or over)

CLASS V Oilor & fireman

STATE: Pennsylvania  
COUNTY: Lawrence  
DECISION NUMBER: AR-2045  
DATE: Date of Publication  
SUPERSEDES Decision No. AQ-2068 dated February 15, 1974, in 39 FR 6034.  
DESCRIPTION OF WORK: Building Construction, (excluding single family homes and garden type apartments up to and including 4 stories)

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BUILDING CONSTRUCTION	Fringe Benefits Payments				
	Basic Hourly Rates	H & W	Pensions	Vacation	App. Tr.
Asbestos Workers	\$9.69	.30	.30		.04
Bollamakers	9.07	7%	7%		.01
Bricklayers	8.42	.45	7%		
Carpenters	8.92	5%	7 1/2%		.4 of 1%
Coment Masons	9.40				
Electricians	9.56	.30	1 1/4-1.10		1/2 of 1%
Elevator Constructors	8.84	.395	.26	2 1/2-btc	.015
Elevator Constructors' Helpers	7.07JR	.395	.26	2 1/2-btc	.015
Elevator Constructors' Helpers (Prob.)	5.07JR				
Glaziers	8.57	.35	.20		.01
Ironworkers, Structural, Ornamental and Reinforcing Laborers:	9.37	.40	.85		.05
Laborers, carryable pumps, wost brick buggy or similar, vibrator operators, walk behind forklift or similar (non self-propelled) stripper and mover of forms, cement masons, footers, window cleaner, tool room man, all material conveyor (regardless of power used, including starting and stopping)	7.15	.40	.40		
Wost brick buggy or similar (self-propelled), power wheelbarrows and buggies, walk behind forklift or similar, (self-propelled) wagon driller helper, drill runner, drill runners' helper, (including drill mounted on truck, track or similar), blaster's helper, all operators of compacting equipment, pipe layer, burner, jackhammer man-concrete buster	7.275	.40	.40		
Mod Carrier, scaffold builder, boll and bottom man on furnaces and stacks, mortar mixer, mortar mixing machine (regardless of power used, including starting and stopping) grout machine feeder and pump operator and concrete saw operator	7.40	.40	.40		

Basic Hourly Rates	Fringe Benefits Payments				Ass. Tr.
	H & W	Pensions	Vacation		
\$7.65	.40	.40			
7.85	.40	.40			
8.18					.01
8.225	.35	.10			.01
9.23	.35				
9.04	.20	1%			
6.41	.20	1%			
6.15	.20	1%			
8.42	.45	7%			
7.95		.10			
7.66	5%	27+26%			1%
7.70	.40	.50			
8.00	.40	.50			
8.70	.40	.50			
8.40	.40	.50			
8.70	.40	.50			
9.40	.60	.50			
9.27	5%	7%			.50%
9.70					
9.53	.381	.381			.05
8.53	.25				.05
7.52	.35	.50			.01
8.83	.65	.85			.02
8.265	5%	5%+d			.50%
8.42	.45	7%			
9.45	.50	.70			.07
8.42	.45	7%			
7.95	.45	.10			
8.42	.45	7%			
7.95		.10			
7.95	.45	.10			

PAID HOLIDAYS (Where Applicable):

A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day;  
E-Thanksgiving Day; F-Christmas Day.

FOOTNOTES:

- a. 8 paid holidays, A through F and Washington's Birthday, Good Friday, and Christmas Eve, provided the employee has worked 45 days for the employer during the 120 days prior to the holiday, and is available for work the days preceding and following the holiday.
- b. Employer contributes 4% basic hourly rate for 5 years or more of service or 2% basic hourly rate for 6 months to 5 years of service as Vacation Pay Credit and 6 paid holidays, A through F.
- c. Six paid holidays: A through F.
- d. Employer contributes 4.5% of gross pay to a saving fund.
- f. Employer contributes 5% of gross earning to a saving fund.

## NOTICES

PA-2-FEO-1-M 1 of 3

**BUILDING CONSTRUCTION**  
**POWER EQUIPMENT OPERATORS**

	Basic Hourly Rates	Fringe Benefits Payments			App. Yr.
		H & W	Pensions	Vacation	
CLASS I	9.875	.50	.50		.09
CLASS 1-A	10.125	.50	.50		.09
CLASS 1-B	10.375	.50	.50		.09
CLASS 1-C	10.625	.50	.50		.09
CLASS II	9.725	.50	.50		.09
CLASS III	9.15	.50	.50		.09
CLASS 3-A	9.65	.50	.50		.09
CLASS IV	9.15	.50	.50		.09
CLASS V	8.40	.50	.50		.09
CLASS VI	8.15	.50	.50		.09
CLASS 6-A	8.25	.50	.50		.09
CLASS 6-B	8.40	.50	.50		.09

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CLASS I: Austin-Western or similar type up to 25 ton, Austin-Western or similar type 25 ton or over, auto grader (GHI or similar), backhoe, batch plant when conveyors are used for direct feeding or discharge, batch plant - no conveyors for direct feeding or discharge (without other) cableway, onsen drill, central mix plant, cranes (excluding overhead) (truck or crawler type) cranes - tower (mobile) cranes tower (climbing type), derrick-traveler (self propelled), derrick (all types) (when assistance required it will be an oiler or apprentice), derrick boats, dragline, dredge, engineer-maintenance (mechanic weekly rated), franki or similar type, pile driver, Gradall (remote control or otherwise), helicopter (when used for erection purposes), helicopter hoist operators (when used for erection purposes, Hi Lift 4 yds. or over hoist-hoist (2 cages up to 10 floors) hoist-single cage with Chicago boom attached hoist (50 ft. or over) (steels stoves or furnaces), hoist (all types jobs) hop-to or similar type with 180° swing, hop-to or similar type with 360° swing, kooat, koehring scoop, motor chip harvester or similar type, mix mobile or similar type (with self-loading attachment), mix mobile or similar type, mucking machine (tunnel), multiple bowl machines, pipe driver (sonic or similar type) (when assistance required it will be an oiler or apprentice), post driver - guard rail (truck mounted) pumpcrete-mobile or similar type, quad mine, shovels (all types), slip form paver (GHI or similar, tractors - boom mounted (all types) tractors (all types with hydraulic backhoe attached), tug boat, whirley

CLASS 1-A: Austin-Western or similar type up to 25 tons with jib, Austin-Western or similar type 25 ton or over with jib, cranes (boom or mast 100 ft. or over up to & including 150 ft. (truck or crawler type) cranes - mobile (any type 15 ton or over) hoist-rod (2 cages over 10 floors)

CLASS 1-B: Cranes (boom or mast over 150 ft. up to & including 200 ft. (truck or crawler type), engineer - lead.

CLASS 1-C: Cranes (boom or mast over 200 ft. + .75

CLASS II: auger - truck or tractor mounted, back filling machine, bent - material or personnel carrying (powered) bent of job week (inboard or outboard), bulldozer, cable layer, compactor with blade, concrete bolt placer, crane - overhead, crushing & screening plants, drill - well & core (truck mounted type, drill - core (truck or skid mounted), drill - well & core (truck mounted) elevator (new buildings and major remodeling old), gravel loader, excavating equipment (all other), forklift-hull or similar, grader, grader-elevating, grader-equipment (head), Hi-Lift less than 4 yds, hoist - one drum (4 floors or over), hoist - head (buildings 4 floors or more), hoist - (2 drums or more in one unit), jute operator, descriptive, lift slab machine (hydraulic), mixer - paving, mucking machine, pipe cleaning machine, refrigeration plant (used for contr. jobs in cooling, concrete & holding tanks), road carrier (or similar type) scoop (single bowl) self-powered & tractor driven spreader - concrete, asphalt and stone, Tower Mobile (hoisting or lowering material) trencher, well point system, grout pump (10 H.P. or over) paver operator asphalt (spreader), pumpcrete or similar type (not self-propelled) pumpcrete machine operator (stationary), fire repairman (when assigned to job), welder repairman Asphalt plant operator, atley loader.

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CLASS III: Bailer, compactor (ridden or self-propelled), crane (curry) curb builder (self-propelled) drills-wells and horizontal, elevator (alterations of old building), forklifts (ridden or self-propelled), hoist one drum (regardless of power used) pavement breaker (self-propelled or ridden), pipe dream, roller, saw (concrete), soil stabilizer (pump type), stone crusher, stone spreader, self-propelled, tractors (when used for snaking and hauling), tube finishing (GHI or similar type), tugger, truck (winch) truck or hydraulic boom (when hoisting & placing), ballast regulator, boring machine, broom, power (except push type), conveyor over 1 and up to units (regardless of power used) form line machine, hoists (monorail) regardless of power used hoist roof (regardless of power used), truck machine or similar type, mixer concrete (regardless of power used), mixer mortar - over 10 cu. ft. (regardless of power used), spray cure machine power driven steam jenny (or similar type) syphon (steam or air), welding machine single (300 amp or over) (other than electrically driven

CLASS 3-A: Conveyors 4 units or more

CLASS IV: Ballast Regulator, Boring Machine, Broom, power (except push type), Compressor - Single (over 65 CFM), conveyor over 1 and up to 3 units (regardless of power used), Form line machine, Generator (over 5 KW), Hoists (Monorail) (regardless of power used), Hoist Roof (regardless of power used), Huck machine or similar type, Mixer Concrete (regardless of power used), Mixer Mortar - over 10 cu ft (regardless of power used), pump (over 1 1/2" discharge regardless of power used), Spray Cure Machine (power driven), steam jenny (or similar type), syphon (steam or air), Welding machine single (300 amp or over) other than electrically driven, plant, private or industrial air or steam valve

CLASS V: Compressor - 65 cu. ft. or under (regardless of power used), conveyor one (1) unit (regardless of power used), heaters - up to and including 6, Jack motor hydraulic (single type) power driven, ladavator, mixer mortar (10 cu. ft. or under), mulching machine, pin puller (powered), pulverizer, pump - 1 1/2" discharge or less, seeding machine, spreader side delivery, shoulder (attachment), tip tamper (multiple heads), tractor farm (when used for landclearing), water blaster

CLASS VI: Brake man, deck hand, helicopter signman, oiler

CLASS 6-A: Crane truck: oiler and fireman

CLASS 6-B: Oiler truck crane 50 ton or over, mechanic helper.

AR-2065 P 7

PA-2-JD-1-F				
BUILDING CONSTRUCTION	Basic Hourly Rates	Fringe Benefits Payments		
		H & W	Pensions	Vacation
Truck Drivers:				
Warehousemen, service trucks (pick-up, jeep, station wagon, panel truck)	5.855	.30	.30	a
Dumps and flat tops	5.905	.30	.30	a
Transit-mix, single axle	5.93	.30	.30	a
Transit-mix, tandem	5.93	.30	.30	a
Distributed truck over 33,00 lbs. gross weight	5.905	.30	.30	a
Distributed truck up to 33,00 lbs. gross weights	6.055	.30	.30	a
Heavy duty trailers with high bed, 4 wheels	5.955	.30	.30	a
Heavy duty trailers with low bed, 6 to 16 wheels	6.255	.30	.30	a
Trucks with dolly	6.055	.30	.30	a
Euclide or equivalent	6.055	.30	.30	a
Truck with dump trailers or tandems	6.23	.30	.30	a
Winch trucks	6.23	.30	.30	a
Towing equipment off job site	6.055	.30	.30	a
FOOTNOTE:				
a. Paid Holidays: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Christmas Day and Veterans Day & Good Friday. provide the employee is available for work the day before and the day after the holiday and has been employed by the employer a minimum of 40 hours each calendar month for two consecutive months.				

AR-2046 P. 2

## SUPERSEDES DECISION

STATE: Pennsylvania COUNTY: Monroe  
 DECISION NO. AR-2046 DATE: Date of Publication  
 Supersedes Decision No. AQ-2066 dated February 15, 1974, in 39 FR 6026.  
 DESCRIPTION OF WORK: Building construction, (excluding single family homes and garden type apartments up to and including 4 stories).

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BUILDING CONSTRUCTION	L3-PA-1-0				
	Basic Hourly Rates	H & W	Pensions	Vacation	App. Tr.
Asbestos workers	\$9.69	.30	.30		.04
Bellows makers	9.07	.7%	.7%		.01
Bricklayers	8.45	.40	.20		.02
Carpenters	8.31	.30	.50		.02
Cement masons	9.00	.6%	.16%		.01
Electricians	9.60	.35	174.45		.01
Glaziers	8.57	.35	.20		.01
Ironworkers, structural	9.37	.35	.45		.05
Ironworkers, ornamental	9.37	.35	.45		.05
Ironworkers, reinforcing	9.37	.35	.45		.05
Laborers:					
Laborers, carryable pumps vent					
brick buggy or similar, vibrator					
ops., walk behind forklift or					
similar (non self-propelled)					
stripper and mow of forms,					
ceasing mason, footers, window					
cleaner, tool room man, all ma-					
terial conveyor (regardless of					
power used, including starting &					
stopping)					
Went brick buggy or similar (self-					
propelled), power wheelbarrows &					
buggies, walk behind forklift or					
similar, (self-propelled) wagon					
drill runner, drill runners'					
helper, (including drill mounted					
on truck, track or similar),					
blaster's helper, all operators					
of compacting equipment, pipe lay-					
er, turner, jackman-man -con-					
crete tumbler					
Mod carrier, scaffold bulldoz, ball					
& batter man on furnaces & stacin					
sorter mixer, mortar mixing machin					
(regardless of power used, in-					
cluding starting & stopping) grou					
machine feeder & pump operator					
Concrete saw operators					
Gunite masonman					
Blaster, wagon drill operator					
Lathers					
Line Construction:					
Lineman, dynamite - man		.20	.15		.15
Heavy equipment operator		.20	.15		.15
Groundman - truck driver		.20	.15		.15
Groundman		.20	.15		.15

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	L3-PA-1-0				
	Basic Hourly Rates	H & W	Pensions	Vacation	App. Tr.
Marble motters	8.365				
Marble motters' helpers	7.015				
Millwrights	9.01	.30	.50		.02
Painters:					
Commercial, Brush	7.70	.40	.50		
Roller	8.00	.40	.50		
Spray	8.70	.40	.50		
Painters, Industrial					
Brush	8.40	.40	.50		
Roller	8.70	.40	.50		
Spray	9.40	.40	.50		
Plasterers	9.01	.30	.50		.02
Plasterers:					
Shonango, Sandy Lake & Fredonia	8.90	.35	.20		.02
Remainder of County	8.00	.40	.10		.02
Plumbers	9.86	.40	.50		.01
Roofers	8.02	.35	.50		.01
Shoot metal workers	8.90	.20	.25		.01
Soft floor layers	8.78	.30	.50		.02
Sprinkler fitters	9.45	.50	.70		.08
Stonemasons	9.86	.40	.10		.02
Stonemasons	8.45	.40	.20		.02
Terrazzo workers	8.87	.45	.75		
Terrazzo workers' helpers	7.015				
Tile motters	8.365				
Tile motters' helpers	7.015				

Welders - receive rate prescribed  
 for craft performing operation to  
 which welding is incidental.

BUILDING CONSTRUCTION

POWER EQUIPMENT OPERATORS

	Basic Hourly Rates	Fringe Benefits Payments			App. Tr.
		H & W	Pensions	Vocational	
CLASS I	9.875	.50	.50		.09
CLASS 1-A	10.125	.50	.50		.09
CLASS 1-B	10.375	.50	.50		.09
CLASS 1-C	10.625	.50	.50		.09
CLASS II	9.725	.50	.50		.09
CLASS III	9.45	.50	.50		.09
CLASS 3-A	9.65	.50	.50		.09
CLASS IV	9.45	.50	.50		.09
CLASS V	8.40	.50	.50		.09
CLASS VI	8.45	.50	.50		.09
CLASS 6-A	8.25	.50	.50		.09
CLASS 6-B	8.40	.50	.50		.09

CLASS I: Austin-Western or similar type up to 25 ton, austin-western or similar type 25 ton or over, auto grader (GHI or similar), backhoe, batch plant when conveyors are used for direct feeding or discharge, batch plant - no conveyors for direct feeding or discharge (without oiler) cableway, calson drill, central mix plant, cranes (excluding overhead) truck or crawler type cranes - tower (mobile) cranes tower (climbing type), derrick-traveler (self propelled), derrick (all types) (when assistance required it will be an oiler or apprentice), derrick boats, dragline, dredge, engineer-maintenance (mechanic weekly rated), franki or similar type, pile driver, gradall (remote control or otherwise), helicopter (when used for erection purposes), helicopter hoist operators (when used for erection purposes, Hi lift 4 yds. or over hoist-hod (2 cages up to 10 floors) hoist-single cage with chicao boom attached hoist (50 ft. or over) (stacks stoves or furnaces), hoist (alliform jobs) hop-to or similar type with 180° swing, hop-to or similar type with 360° swing, koeal, koehring scoopper, metro chip harvester or similar type, mix mobile or similar type (with self-loading attachment), mix mobile or similar type, mucking machine (tunnel), multiple bowl machines, pipe driver (sonic or similar type) (when assistance required it will be an oiler or apprentice), post driver - guard rail (truck mounted pumpcrete-mobile or similar type, quad nine, shovels (all types), slp form paver (GHI or similar, tractors - boom mounted (all types) tractors (all types with hydraulic backhoe attached), tug boat, whirley

CLASS 1-A: Austin-Western or similar type up to 25 tons with jib, austin western or similar type 25 ton or over with jib, cranes (boom or mast 100 ft. or over up to & including 150 ft. (truck or crawler type) cranes - mobile (any type 15 ton or over) hoist-red (2 cages over 10 floors)

CLASS 1-B: Cranes (boom or mast over 150 ft. up to & including 200 ft. (truck or crawler type), engineer - lead.

CLASS 1-C: Cranes (boom or mast over 200 ft. + .75

CLASS II: auger - truck or tractor mounted, back filling machine, boat - material or personnel carrying (powered) boat of job week (inboard or outboard), bulldozer, cable layer, compactor with blade, concrete belt placer, crane - overhead, crushing & screening plants, drill - davey or similar type, drill - core (truck or skid mounted), drill - well & core (truck mounted) elevator (new buildings and major remodeling old), euclid loader, excavating equipment (all other), forkift-hull or similar, grader, grader-elevating, greaser-equipment (head), Hi-Lift less than 4 yds, hoist - one drum (4 floors or over), hoist - hod (buildings 4 floors or more), hoist - 2 drums or more in one unit), jumbo operator, locomotive, lift slab machine (hydraulic), mixer - paving, mucking machine, pipe cleaning machine, refrigeration plant (used for const. jobs ie. cooling, concrete & holding tanks), ross carrier (or similar type) scoop (single bowl) self-powered & tractor drawn spreader - concrete, asphalt and stone, Tower Mobile (hoisting or lowering material) trencher, well point systems, grout pump (10 H.P. or over) paver operator asphalt (spreader), pumpcrete or similar type (not self-propelled) pumpcrete machine operator (stationary), tire repairman (when assigned to job), welder repairman Asphalt plant operator, athy loader.

CLASS III: Boiler, compactor (ridden or self-propelled), crane (carry) curb builder (self-propelled) drills-wells and horizontal, elevator (alterations of old building), forklifts (ridden or self-propelled), hoist one drum (regardless of power used), pavement breaker (self-propelled or ridden), pipe drum, roller, saw (concrete), soil stabilizer (pump type), stone crusher, stone spreader self-propelled, tractors (when used for snaking and hauling), tub finishing (OHV or similar type), tugger, truck (winch) truck or hydraulic boom (when hoisting & placing), ballast regulator, boring machine, broom, power (except push type), conveyor over 1 and up to units (regardless of power used) form line machine, hoists (monorail) regardless of power used hoist roof (regardless of power used), hook machine or similar type, mixer concrete (regardless of power used), mixer mortar - over 10 cu. ft. (regardless of power used), spray cure machine power driven steam jenny (or similar type) syphon (steam or air), welding machine single (300 amp or over) (other than electrically driven

CLASS 3-A: Conveyors 4 units or more

CLASS IV: Ballast Regulator, Boring Machine, Broom, power (except push type), Compressor - Single (over 65 CFM), conveyor over 1 and up to 3 units (regardless of power used), Form line machine, Generator (over 5 KW), Hoists (Monorail) (regardless of power used), Hoist Roof (regardless of power used), Hook machine or similar type, Mixer Concrete (regardless of power used), Mixer Mortar - over 10 cu. ft. (regardless of power used), pump (over 1½" discharge regardless of power used), Spray Cure Machine (power driven), steam jenny (or similar type), syphon (steam or air), Welding machine single (300 amp or over) other than electrically driven, plant, private or industrial air or steam valve

CLASS V: Compressor - 65 cu. ft. or under (regardless of power used), conveyor one (1) unit (regardless of power used), heaters - up to and including 6, jack motor hydraulic (single type) power driven, ladavator, mixer mortar (10 cu. ft. or under), mulching machine, pin puller (powered), pulverizer, pump - 1½" discharge or less, spreading machine, spreader side delivery, shoulder (attachment), tie tamper (multiple heads), tractor farm (when used for landreaping), water blaster

CLASS VI: Brake man, deck hand, helicopter signalman, oiler

CLASS 6-A: Crane truck: oiler and fireman

CLASS 6-B: Oiler truck crane 50 ton or over, mechanic helper

PA-2-JD-1-F

## BUILDING CONSTRUCTION

	Basic Hourly Rates	Fringe Benefits Payments			App. Tr.
		H & W	Pensions	Vacation	
Truck Drivers:					
Warehouseman, service trucks (pick up, jeep, station wagon, panel truck)	\$5.855	.30	.30	a	
Dumps and flat tops	5.905	.30	.30	a	
Transit-mix, single axle	5.93	.30	.30	a	
Transit-mix, tandem	5.93	.30	.30	a	
Distributed truck over 33,00 lbs.	5.905	.30	.30	a	
Gross weight	5.905	.30	.30	a	
Distributed truck up to 33,00 lbs.	6.055	.30	.30	a	
Gross weights	5.955	.30	.30	a	
Heavy duty trailers with high bed, 4 wheels	6.255	.30	.30	a	
Heavy duty trailers with low bed, 6 to 16 wheels	6.055	.30	.30	a	
Trucks with dolly	6.055	.30	.30	a	
Euclid or equivalent	6.055	.30	.30	a	
Truck with dump trailers or tandems	6.23	.30	.30	a	
Winch trucks	6.055	.30	.30	a	
Towing equipment off job site	6.055	.30	.30	a	

## FOOTNOTES:

3. Paid Holidays: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Christmas Day and Veterans Day & Good Friday, provide the employee is available for work the day before and the day after the holiday and has been employed by the employer a minimum of 40 hours each calendar month for two consecutive months.

STATE: Texas COUNTY: El Paso  
 DECISION NO.: AR-69 DATE: Date of Publication  
 Supersedeas Decision No. AR-69, dated September 27, 1974, in 39 FR 35062  
 DESCRIPTION OF WORK: Building Construction, (excluding single family homes and garden type apartments up to and including 4 stories). (See General Wage Determination AR-36 for Incidental Paving).

DECISION NO. AR-69

	Basic Hourly Rates	Fringe Benefits Payments			App. Tr.
		H & W	Pensions	Vacation	
MARBLE MASONS	\$6.17				.06
PAINTERS:					
Brush, paperhangers	5.06	.24			
Steel after erection, steam cleaning, buffing with power driven tools	5.475	.24			
Spray, sandblasting, waterblast-					
ing, swing stage	5.765	.24			
Tapers, roller 9" in width	5.06	.24			
Ames tools	5.28	.24			
Stripping machine	5.76	.24			
PLASTERERS	6.41	.28			.01
PLUMBERS & STEAMFITTERS	6.75	.31	.30		.02
POWER EQUIPMENT OPERATORS:					
GROUP 1	4.96	.30	.30		.03
GROUP 2	5.54	.30	.30		.03
GROUP 3	5.63	.30	.30		.03
GROUP 4	5.68	.30	.30		.03
GROUP 5	5.76	.30	.30		.03
GROUP 6	6.00	.30	.30		.03
GROUP 7	6.16	.30	.30		.03
GROUP 8	5.63	.30	.30		.03
GROUP 9	5.86	.30	.30		.03
GROUP 10	6.16	.30	.30		.03

## CLASSIFICATION DEFINITIONS

## POWER EQUIPMENT OPERATORS

GROUP 1 - Fireman, Oiler; Mechanic, Grease Truck and Walder's Helpers; Screedman, Pneumatic roller towed by farm-type tractor or truck; Scale Operator and such as bin-a-batch; Rubber-tired farm type tractors and tractors under 35 HP without attachments.  
 GROUP 2 - Air Compressors, Power Plants, pumps and welding machines (an operating engineer will not be required for an air compressor under 315 c.f.m., a pump under three inches or a light plant generating fifteen kilowatts or less, or one welding machine, if and when there is another operating engineer employed on the job who serves the units); Concrete mixers, under 1 yard, and concrete batch plants, under 1 yard, gunnite and pumpcrete machines, mechanical bull floats, spreading and finishing machines. Screening Plants. Drilling machines, Diamond, rotary, core and cable drilling well under 6 inches. Hoists, scoops, A frame Air tugs; building hoist, 1 drum hydrohoist, hydrocranes, winch truck. Loaders; Elevators, belt type loader, front end loader (under 2 yards) and over head loaders; Forklift and lumber staker on construction job site. Grease truck operator, (Head Oiler). Motor man and Industrial Locomotive. tractors under 35 HP with attachments; and farm type tractor with back, or shovel type attachments

	Basic Hourly Rates	Fringe Benefits Payments			App. Tr.
		H & W	Pensions	Vacation	
ASBESTOS WORKERS	\$6.28	.50	.72(a)		.03
FOOTNOTE: a-Includes \$0.07 contribution to Occupational Health Fund.	7.80	.30	.76		.02
BOTTLEMAKERS					
BRICKLAYERS; BLOCKLAYERS; ROCK	6.13	.38	.20		.06
MASONS; STONEMASONS	6.15	.45			.02
CARPENTERS	6.40	.45			.02
Millwrights	6.275	.45			.02
Stationary radial arm power saw operator	6.15	.45			.02
Floor layers	5.155	.38			.03
CEMENT MASONS					
ELECTRICIANS:	7.05	.25	1%		1/2%
Electricians	7.30	.25	1%		1/2%
Cable splicers	6.49	.395	.26	2 1/2%+4b	.02
ELEVATOR CONSTRUCTORS	7.04JR	.395	.26	2 1/2%+4b	.02
ELEVATOR CONSTRUCTORS' HELPERS					
ELEVATOR CONSTRUCTORS' HELPERS (PROB.)	5.07JR				
FOOTNOTES: a-1st 6 mos. - none; 6 mos. to 5 yrs. - 2%; over 5 yrs. - 4% of basic hourly rate; b-Paid Holidays: New Years' Day; Memorial Day; Independence Day; Labor Day; Thanksgiving Day; Christmas Day.					
GLAZIERS	5.27	.24	.50		.05
IRONWORKERS	6.70	.40			
LABORERS:					
Powderman or blasterer	4.08	.26	.10		
Outside wagon drill; wagon drill tenders; miner	3.83	.26	.10		
Grout gun or gunite; mason tender; mortar mixer; machine man; track man; chuck tender	3.58	.26	.10		
Pipelayer, main sewer and drainage	3.455	.26	.10		
Jackhammer operator, asphalt taker; kettleman; asphalt or pot man	3.33	.26	.10		
Common	3.18	.26	.10		
LATHES	6.69				.01
LINE CONSTRUCTION:					
Lineman-Technician; Equipment operators	7.05	.25	1%		1/2%
Cable splicers	7.30	.25	1%		1/2%
Groundman	5.29	.25	1%		1/2%

POWER EQUIPMENT OPERATORS CLASSIFICATION DEFINITIONS (CONT'D)

GROUP 5 - Concrete mixers 1 yard and over and batch plants 1 yard and over, single drum paving machines. Crushing plants. Drilling machines, 6 inches and over; Front and loaders, 2 yards and over; Paving; Asphalt plants, boiler or retort heater, distributor, lay down machine, pug mill, breakdown and tandem rollers. Steam Engineer. Trenching Machines. Patrol, rough, not required to blue top or finish

GROUP 4 - Tractor Equipment: Athey and Barber Green Loader, Bulldozer, DW10, DW20, DW 21, Dumer, Elevating Grader; Euclid, Highlander, Scraper, Traxcavator, Turnapull, Turn-acker and Tractors 35 hp and up

GROUP 5 - Concrete paving machines, double drum. Cateranes, Hyaters, Cherry Picker, Attachment cranes, side and swing boom tractors, Building Hoist, 2 cranes and up.

GROUP 6 - Shovel, Backhoe, clam and dragline 3/4 yards and under; Cranes 25 tons and under

GROUP 7 - Guy and stiff leg derrick, Piledrivers; Crawler or skid rig. Shovel, Backhoe, clam and dragline over 3/4 yards; Cranes over 25 tons

GROUP 8 - Refrigeration, alshah, Jumbo form operators

GROUP 9 - Pucking machines

GROUP 10 - Mine hoists

Basic Hourly Rates	Fringe Benefits Payments			App. Tr.
	H & W	Pensions	Vacation	
ROOFERS:				
Roofers; Waterproofers; Pipe-wrapers	\$5.00			.005
SHEET METAL WORKERS	7.70	.10		
SOFT FLOOR LAYERS	4.56	.24		.08
SPRINKLER FITTERS	9.05	.50		.06
TERRAZZO WORKERS	6.17	.20		
TERRAZZO WORKERS' HELPERS	3.70	.20		
TILE SETTERS	6.17	.20		.06
TILE SETTERS' HELPERS	3.70	.20		
TRUCK DRIVERS:				
Up to and including 2 tons	3.50	.26		
Flat bed dump trucks, each-anically	3.60	.26		
Tank trucks, up to 2500 gallons	3.50	.26		
Standard dump truck, up to and including 4 cu. yds.	3.60	.26		
Dump trucks, over 4 cu. yds.	3.75	.26		
Trucks over 4 tons including transfer mix, all semitruck, etc.	3.75	.26		
Looboy	3.75	.26		
WELDERS - receive rate prescribed for craft performing operation to which welding is incidental.				

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## NOTICES

## MINIMUM WAGES FOR FEDERAL AND FEDERALLY ASSISTED CONSTRUCTION

## General Wage Determination Decisions

## Correction

In FR Doc. 74-23508 appearing at page 36701 as the Part II of the issue of Friday, October 11, 1974, the following "Supersedeas Decision" should be inserted between "AR-2059 P. 9" and "AR-2060 P. 2" on page 36777.

## SUPERSEDEAS DECISION

STATE: NEW YORK

COUNTY: DUTCHESS

DECISION NO.: AR-2060

DATE: Date of Publication

Supersedes Decision No. AQ-2028 dated November 9, 1973 in 38 FR 5066

DESCRIPTION OF WORK: Building Construction, (excluding single family homes and garden type apartments up to and including 4 stories), heavy and highway construction.

BUILDING, HEAVY AND HIGHWAY CONSTRUCTION. 14-New York-1-2-3- V

1 of 3

	Basic Hourly Rates	Fringe Benefits Payments				
		H & W	Pensions	Vacation	App. Tr.	Others
Asbestos workers	\$9.075	5%	4%			
Boilermakers	8.88	5%	15%	7%	.01	
Bricklayers, cement masons, marble setters, plasterers, stone masons and tile setters	9.00	.80	1.60			
Carpenters, Building:						
Wappingers Falls, New Hackensack, Pawling and Beacon, Carpenters, piledrivers and soft floor layers	7.53	7%	5%+.45	.45	.09	
Remainder of County:						
Carpenters and soft floor layers	8.14	6%	6%		.05	
Carpenters, Heavy and Highway:						
Wappingers Falls, New Hackensack, Pawling, and Beacon:						
Carpenters, Piledrivers and Wharf and Dock builders	8.02	7%	5%+.45	.45	.09	
Remainder of County:						
Piledrivers, dock & wharf builders	7.60	.60	1.15	.46	.02	
Cement masons, Bricklayers, Stone masons (Heavy & Highway)	8.20	8%	18%			
Electricians:						
Beacon and Fishkill	8.70	.40	1%+.64	.60	1%	
Remainder of County:	8.75	.50	1%+.35	5%+.40	1/2 of 1%	
Elevator constructors	9.10	.395	.26 +b	c+d	.015	
Elevator constructors' helpers	6.83	.395	.26 +b	c+d	.015	
Elevator constructors' helpers (prob)	4.55					
Elevator constructors modernization	8.33	.395	.26 +b	c+d	.015	
helpers	6.25	.395	.26 +b	c+d	.015	
Elevator constructors repair	7.48	.395	.26 +b	c+d	.015	
Elevator constructors repair helpers	5.61	.395	.26 +b	c+d	.015	
Glaziers	7.05	6%	6%+1.00	5%		
Ironworkers, structural, orna. & reinforcing	8.50	.60	1.43	1.16	.04	
Lathers	7.70	9%	.55		.01	
Lead Burners	9.25	.35		e	.01	
Line Construction:						
Lineran	9.33	.50	1%+.40	f	3/8%	
Cable Splicer	10.08	.50	1%+.40	f	3/8%	
Groundman digging machine operator	8.89	.50	1%+.40	f	3/8%	
Groundman mobile equipment operator	8.30	.50	1%+.40	f	3/8%	
Groundman truck driver and mechanic	7.90	.50	1%+.40	f	3/8%	
Groundman dynamite man	8.30	.50	1%+.40	f	3/8%	